



COMDTNOTE 12750
JUN 18 1999

COMMANDANT NOTICE 12750

Subj: CH-3 TO CIVILIAN PERSONNEL ACTIONS: DISCIPLINE, PERFORMANCE,
ADVERSE ACTIONS, APPEALS, AND GRIEVANCES, COMDTINST M12750.4

1. PURPOSE: This Notice transmits changes to Chapter 3 of the Civilian Personnel Actions: Discipline, Performance, Adverse Actions, Appeals, and Grievances Instruction.
2. ACTION: Area and district commanders, commanders of maintenance and logistics commands, commanding officers of headquarters units, assistant commandants for directorates, Director of Finance and Procurement, Director of Resources, and Chief Counsel, shall ensure compliance with the provisions of this directive.
3. SUMMARY OF CHANGES: The changes identify new deciding officials for grievances, replacing the Vice Commandant. The deciding official in formal grievances involving commanding officers of Headquarters units will be the director having technical control of the unit.
4. PROCEDURES: Remove Pages 3-1, 3-2, 3-4, 3-5, and 3-5a. Insert Pages 3-1, 3-2, 3-4, 3-5, and 3-5a.

U.S. Department
of Transportation

United States
Coast Guard



Commandant
United States Coast Guard

Washington, DC 20593-0001
(202) 267-1704
(G-PC-3)

COMDTNOTE 12750
11 DEC 1990

CANCELLED: 11 JUN 1991

COMMANDANT NOTICE 12750

Subj: CH-2 to COMDTINST M12750.4, Civilian Personnel Actions:
Discipline, Performance, Adverse Actions, Appeals, and
Grievances

1. PURPOSE. This Notice transmits changes to the subject Instruction as follows:
 - a. The 3-year reckoning period on disciplinary actions is eliminated (Chapter 1).
 - b. Provisions are made for the use of indefinite suspensions (Chapter 1).
 - c. Eliminates review procedures of managements denial of an employees choice of representative (Chapters 1 and 3).
 - d. Revises Chapter 2, Reduction In Grade and Removal Actions Based on Unacceptable Performance, to include many recent changes to the system made by the Office of Personnel Management.
 - e. Clarifies the definitions of "fact-finder" (Chapter 3).
 - f. Clarifies exclusions from Administrative Grievance Procedures (Chapter 3).

COMDTNOTE 12570
11 DEC 1990

2. SUMMARY OF CHANGES. Chapter 2 has been completely revised. Other changes are marked by a vertical line in the right margin.
3. ACTION. Remove and insert the following pages:

<u>Remove</u>	<u>Insert</u>
Pages i & ii	Pages i & ii, CH-2
Pages 1-3 & 1-4	Pages 1-3, 1-4 & 1-4a, CH-2
Pages 1-9 - 1-16	Pages 1-9 - 1-16, CH-2
Pages 2-1 - 2-12	Pages 2-1 - 2-14, CH-2
Pages 3-1 - 3-6	Pages 3-1 - 3-6, CH-2

/s/ J. A. PIERSON
ACTING CHIEF, OFFICE OF
PERSONNEL AND TRAINING

Encl: (1) CH-2 to COMDTINST M12750.4

U.S. Department
of Transportation

United States
Coast Guard



Commandant
United States Coast Guard

Washington, DC 20593-0001
Phone (202) 267-1704
G-PC-3)

COMDTNOTE 12750
02 AUG 1988

CANCELLED: 01 FEB 1989

COMMANDANT NOTICE 12750

Subj: CH-1 to CONDTINST M12750.4; Civilian Personnel Actions:
Discipline, Performance, Adverse Actions, Appeals and Grievances

1. PURPOSE. This Notice transmits changes to redefine the Vice Commandant's role in adverse actions and third party proceedings, and the assistance rendered by Commandant (G-PC) in those cases which involve the Vice Commandant. Also the Merit System Protection Board's Voluntary Expedited Appeals Procedure (VEAP) has been deleted from the instruction to reflect a recent change to MSPB's rules of practice and procedure which eliminated the VEAP procedure.
2. SUMMARY OF CHANGES. Changes are marked by a vertical line in the right margin. Editorial changes are not marked.
3. ACTION. Remove and insert the following pages:

Remove

1 - 3 and 1 - 4
2 - 3 and 2 - 4
2 - 9 and 2 - 10
3 - 1 and 3 - 2
4 - 5 and 4 - 6

Insert

iii Record of Changes
1 - 3 and 1 - 4, ch-1
2 - 3, and 2 - 4, ch-1
2 - 9 and 2 - 10, ch-1
3 - 1, and 3 - 2, ch-1
4 - 5, ch-1

/s/ T. T. MATTESON
Chief, Office of Personnel
and Training



COMDTINST M12750.4
DEC 15 1987

COMMANDANT INSTRUCTION M12750.4

Subj: Civilian Personnel Actions: Discipline, Performance, Adverse
Actions, Appeals, and Grievances

1. PURPOSE. This Manual provides guidance and procedures for the processing of disciplinary, performance, and adverse actions to correct situations of unacceptable employee conduct and performance. It also provides advice and guidance for the processing of adverse action appeals and administrative grievances. All actions covered by this Manual shall be processed in accordance with applicable laws, controlling rules and regulations, and the guidance and procedures set forth in this Manual.
2. DIRECTIVES AFFECTED. Commandant Instruction M12750.3 is hereby cancelled.
3. ACTION. Area and district commanders, commanders, maintenance and logistics commands, unit commanding officers, chiefs of offices and special staff divisions in Headquarters shall ensure that the provisions of this Manual are carried out within their commands. They shall inform employees of standards of conduct, rules, regulations and procedures for maintaining discipline within the framework of policy contained in this Manual.

/s/ T. T. MATTESON
Chief, Office of Personnel

Encl: (1) Discussion Documentation Sheet
(2) Guideline Schedule of Offense and Remedies
(3) Chart of Grievance Procedures
(4) Chart of Mixed Case Procedures

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CHAPTER 1. DISCIPLINARY AND ADVERSE ACTIONS

- A. General Policy. The primary objective of discipline is to correct an employee's conduct and/or performance while maintaining high productivity, discipline, and morale among all employees. Accordingly, it is the policy of the Coast Guard to impose the minimum remedy that can reasonably be expected to meet this objective. Only when prior warning, disciplinary, or adverse action has failed to correct an offending employee, or when an employee has committed a particularly serious first offense may removal/termination action be taken. It should be noted that adverse action, up to and including removal, may only be taken for such cause as will promote the efficiency of the service. All actions will be taken without regard to race, religion, sex, color, national origin, age, political affiliation, physical or mental handicap, or marital status. In addition, actions will not be taken against an employee on the basis of any prohibited personnel practice (5 United States Code (U.S.C.) 2302).
- B. Coverage.
1. Actions covered. Admonishments, letters of reprimand, suspensions, reduction in grade and/or pay, and removals based on unacceptable conduct and/or performance.
 2. Actions Excluded.
 - a. A suspension or removal taken in the interests of national security (5 U.S.C. 7532);
 - b. A suspension or removal taken against an Administrative Law Judge (5 U.S.C. 7521);
 - c. An action initiated under authority of the Special Counsel or taken at the direction of the Merit Systems Protection Board (MSPB) (5 U.S.C. 1205, 1206, 1207);
 - d. A reduction-in-force action (5 U.S.C. 3502);
 - e. Reduction in grade of a supervisor or manager who has not completed the probationary period if such reduction is to the grade held immediately before becoming such a supervisor or manager (5 U.S.C. 3321);
 - f. A reduction in grade or removal based solely on unacceptable performance as set forth in 5 U.S.C. 4303 (see chapter 2);
 - g. An action which entitles an employee to grade retention and an action to terminate this entitlement (5 U.S.C. 5362);
 - h. A voluntary action initiated by the employee;
 - i. An action taken under provision of statute other than one codified in Title 5, U.S.C., which excepts the action from subchapter II of chapter 75 of the Title 5, U.S.C.;

- 1.B.2. j. Action taken or directed by the Office of Personnel Management (OPM) for suitability reasons (5 Code of Federal Regulations (CFR) Parts 731 and 754);
- k. Involuntary retirement because of disability (5 CFR Part 831);
- l. Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;
- m. An action which terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which temporarily promoted, or reassigns or demotes the employee to a different position not at a lower grade or level than the position from which temporarily promoted;
- n. An action which terminates a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of 2 years but not more than 5 years and return of the employee to the position from which promoted or to a position of equivalent grade and pay (5 CFR 335.102);
- o. Cancellation of a promotion to a position not classified prior to the promotion;
- p. Placement of an employee serving on an intermittent, part-time, or seasonal basis in a nonduty, nonpay status in accordance with conditions established at the time of appointment;
- q. Reduction of an employee's rate of pay from a rate which is contrary to law or regulation to a rate which is required or permitted by law or regulation; and
- r. An action against a reemployed annuitant.

3. Employees covered.

- a. A member of the Senior Executive Service (SES) or an individual in the competitive service who is not serving a probationary or trial period under an initial appointment, or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less;
- b. A preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar position; and
- c. An employee with competitive status who occupies a position in Schedule B of 5 CFR Part 213, provided that employee has completed a trial period of 1 year after initial appointment in such a position; and

- 1.B.3. d. An employee who occupies a professional and administrative career (PAC) position in Schedule B of 5 CFR Part 213, provided the employee has completed a trial period of 1 year after initial appointment in such a position.

4. Employees excluded.

- a. Nonappropriated fund activity employees;
- b. Schedule B excepted service employees without competitive status, and Schedule B Professional and Career position employees who are serving their 1 year trial period;
- c. Employees whose appointments are made with the advice and consent of the Senate;
- d. Employees whose positions have been determined to be of confidential policy-making or policy-advocating character by:
 - (1) The OPM for positions that it has excepted from the competitive service; or
 - (2) The President or the Head of an agency for positions which are excepted from the competitive service by statute;
- e. With respect to reductions in grade or pay and furloughs for 30 days or less, members of the SES;
- f. With respect to suspensions of 14 calendar days or less, members of the SES and employees as defined in paragraph B.3.b. of this chapter;
- g. With respect to removals or suspensions for more than 14 calendar days, noncareer, limited term, or limited emergency SES appointees, or career SES members during the probationary period who by virtue of their appointments, held immediately prior to entry into the SES, are not covered.

C. Definitions.

1. Active duty status. Any pay status, including authorized overtime, holiday pay, and other forms of premium pay.
2. Appealable adverse action. A removal, suspension of 15 calendar days or more, or reduction in grade or pay.
3. Appeals to the Merit System Protection Board (MSPB). Written requests by employees to the MSPB for the review of appealable adverse actions.
4. Day. Calendar day
5. Equal Employment Opportunity Commission (EEOC). The Federal agency with authority for administrative review of MSPB decisions on allegations of prohibited discrimination in connection with matters appealable to the MSPB.

1.C.6. Grievable adverse action. A suspension of 14 calendar days or less.

7. Management representative. Individual who represents the Coast Guard during hearings before an administrative judge of the MSPB or who prepares petitions for review or responses to appellants' petitions for review.

8. Mixed case. An allegation or complaint of discrimination filed with the Coast Guard, based on race, color, religion, sex, national origin, handicap, age, and/or reprisal, related to, or stemming from, an action taken by the Coast Guard against the complainant, which action may be appealed to the MSPB.

9. Official. An individual who has been delegated authority to propose or decide an action under this chapter.

10. Preponderance of the evidence. That degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true. Appealable adverse actions must be supported by the preponderance of the evidence.

D. Delegation of Authority. Area and district commanders, commanders, maintenance and logistics commands, and unit commanding officers are delegated authority to propose and decide actions under this chapter. These officials are authorized to redelegate this authority to subordinate supervisors and managers to the extent they deem appropriate. For grievable adverse actions and appealable adverse actions proposed by the office chiefs, the deciding official shall be the Chief of Staff of Coast Guard Headquarters. For grievable adverse actions and appealable adverse actions proposed by an area or district commander, commander, maintenance and logistics command, or commanding officer of a Headquarters unit, the deciding official may be the same individual.

1.E. Staff Support. The Civilian Personnel Office is responsible for providing technical guidance and advice to all levels of management in disciplinary and adverse actions. To that end, the Civilian Personnel Office shall review all pertinent background material provided by the line official initiating disciplinary or adverse actions and separations to determine consistency and ensure conformity with policies and procedures contained in this Manual. Letters proposing and effecting such actions shall be prepared by the Civilian Personnel Office Staff to ensure that the employee is informed of rights to representation, reply, review of material on which the action is based, and to grieve and/or appeal.

- 1.F. Relationship to the Employee Counseling Assistance Program (ECAP). The ECAP supplements but does not replace discipline as a tool for dealing with a problem employee. The purpose of discipline is to correct the offending employee and maintain discipline and morale among other employees. The purpose of the ECAP is to correct unsatisfactory performance or conduct, hopefully, before disciplinary action becomes necessary. Referring an employee for counseling assistance is not, however, a bar to taking disciplinary actions. There is a distinction to be made between offering assistance through counseling to an employee with a problem, and taking disciplinary action against an offender. In some instances, it will be appropriate and necessary to take both actions when the employee has committed an offense, even though the offense results from a personal problem. Questions concerning the relationship between the ECAP and effective discipline should be referred to the Civilian Personnel Office.
- G. Relationship to Equal Employment Opportunity Complaint Procedures. When an employee makes a timely allegation, in writing, of discrimination on the basis of race, color, sex, religion, physical or mental handicap, age, or national origin before a final decision is issued in a grievable adverse action or appealable adverse action, further action should be deferred until the local Civil Rights Officer is consulted. Such consultation may be made by telephone to minimize delays. Since the Civilian Personnel Office is responsible for the technical processing of disciplinary and adverse actions, the Civil Rights Officer will keep the Civilian Personnel Office informed of the specific allegations of discrimination in mixed cases. In addition, the Civilian Personnel Officer will keep the Civil Rights Officer informed of any decisions relating to grievable adverse or appealable adverse actions when allegations of discrimination are made. Any information submitted by the employee or employee's representative in the reply shall be considered by the Deciding Official and be included as part of the case file.
- H. Termination of Probationary Employees during their Probationary Period and Termination of Term Employees and Veterans Readjustment Appointees during their First Year of Service.
1. Conduct and/or performance after entrance on duty. When an employee's separation is initiated, the supervisor shall consult with the Civilian Personnel Office for guidance. In accordance with the provisions of 5 CFR 315.804, an employee must be notified in writing why he/she is being terminated and of the effective date of the action. The employee will be advised of his/her right to appeal to the MSPB based on allegations of marital status or partisan political discrimination not later than 20 calendar days after the separation has been effected and the employee will be provided with the address of the appropriate MSPB office for filing the appeal. A copy of the MSPB regulations and appeal form should be provided to the employee. The employee should be advised that only if an allegation of marital status or partisan political discrimination is raised, may the employee appeal the termination on other prohibited discrimination claims (e.g., race, color, religion, sex, or national origin, or age, provided that at the time of the alleged discrimination action the employee was at least 40 years of age). Although the employee is

- 1.H.1. (cont'd) not given a right to reply, a discussion should be held with the employee by the supervisor concerning the separation action. This discussion should be documented, to include any response made by the employee, and will be maintained as part of the case file in the Civilian Personnel Office.
2. Preemployment conduct. When termination is based in whole or in part on an employee's conduct before employment (e.g., intentional falsification of application forms), the supervisor must confer with the Civilian Personnel Office concerning a recommended action since the Civilian Personnel Office has responsibility for making initial employment determinations. If the decision is made to propose the employee's termination, the employee is entitled to the following:
 - a. Notice of proposed termination. The employee is entitled to an advance written notice stating the specific reasons for the proposed action.
 - b. Employee's answer. The employee is entitled to a reasonable time for filing a written answer and for furnishing affidavits in support of his/her answer. The employee is not entitled to an examination of witnesses or a hearing. If the employee answers, management shall consider the answer in reaching its decision.
 - c. Notice of termination. The employee is entitled to be notified of the decision at the earliest practical date. Management shall deliver the decision to the employee at or before the time the action will be made effective. The notice shall be in writing, inform the employee of the reasons for the action, and the effective date of the termination. It must inform the employee of his/her right to appeal to the MSPB not later than 20 calendar days after the separation has been effected and provide the address of the appropriate MSPB office for filing the appeal. It should advise the employee that the MSPB review is confined to allegations of discrimination based on partisan political reasons or marital status or that the management failed to follow proper procedures as required by 5 CFR 315.805. A copy of the MSPB regulations and appeal form (located in 5 CFR Part 1201) should be provided to the employee. It will also advise the employee that only if an allegation of marital status or partisan political discrimination or improper procedure is raised, may the employee appeal the termination on other prohibited discrimination claims (e.g., race, color, religion, sex, or national origin, or age, provided that at the time of the alleged discriminatory action the employee was at least 40 years of age).

I. Preaction Investigation.

1. Before proposing or taking a corrective action, the supervisor and/or the official who has authority to propose the action should

- 1.I.1. (cont'd) hold factfinding discussions with the employee to determine his/her side of the story. These discussions should be documented. Often, a supervisor who is not familiar with the requirements for processing preliminary warnings and disciplinary actions will provide considerable documentation to the Civilian Personnel Office but will miss relevant information. Accordingly, the discussion documentation sheet, enclosure (1), is provided as a guide for supervisors. The employee should not be informed of the particular corrective action that will be taken until all the facts have been gathered and thoroughly considered.
2. The supervisor shall assemble any and all information available which would bring the issues into sharper focus. This may include, but is not limited to, leave records, production records, timecards, office or shop records, disciplinary records, and other pertinent documented evidence. Interviews may be conducted with previous supervisors, physicians, counselors, and witnesses. Requests may be made of an employee to submit evidence such as medical documentation, repair bills, etc., which is subject to supervisor verification, to support his/her reasons for the misconduct or performance deficiencies. (For further discussion concerning medical documentation, see paragraph P. of this chapter.) Written statements will be obtained as necessary. In serious incidents of misconduct or performance deficiencies, it is recommended that affidavits be obtained. The preaction investigation will provide the necessary information to proceed with a specific action or may eliminate the need for any action. The Civilian Personnel Office should be consulted for investigatory guidance and assistance.
- J. Determining Appropriate Action. After an investigation of relevant facts, information, and discussion(s) with the employee, a determination of the appropriate corrective action to be taken, if any, must be made. If formal disciplinary action is determined to be necessary, the supervisor should first refer to the U.S. Coast Guard schedule of offenses and remedies (enclosure (2)) which defines the general range of remedies for specific offenses. He or she should then tentatively determine the appropriate remedy, bearing in mind any special considerations that may be present. The most appropriate remedy is the least serious action that will correct the problem. Additionally, such action should be reasonably consistent with actions taken against other employees for like offenses in similar circumstances. The Civilian Personnel Office can provide information in this regard.
- K. Preliminary Warnings. The purpose of preliminary warnings is to correct an employee's minor deficiencies involving conduct or performance. Preliminary warnings are oral counseling sessions and written admonishments. Generally, these actions are taken prior to taking disciplinary actions. Preliminary warnings may not be counted as prior offenses when determining a remedy under the schedule of offenses and remedies, nor do they become matters of record in the employee's Official Personnel Folder (OPF). They may be cited, however, in disciplinary actions to show that the employee was made aware of acceptable standard(s) of conduct or performance and was

1.K. (cont'd) warned that future instances of misconduct or performance deficiencies may result in disciplinary action. If these actions are cited, the preliminary warning documentation should be included in the disciplinary action official case file. Preliminary warnings will normally be administered by the immediate supervisor. Preliminary warnings are not grievable under the administrative grievance procedures.

1. Oral Counseling Sessions. An oral counseling session is a full and frank discussion, generally held by the employee's immediate supervisor, in which the employee is advised of his/her specific deficiencies and of the acceptable standard(s) of conduct and performance. The employee should be informed that: (1) he/she is being admonished or warned and (2) that future instances of misconduct or performance deficiencies may result in disciplinary action. The employee should be advised that the oral counseling session will be documented and the documentation will be maintained by the supervisor for 1 year or less. Enclosure (1) may be used for this purpose.

2. Written admonishment.

- a. A written admonishment is an informal, corrective letter issued to an employee by a superior official (normally the employee's immediate supervisor) to correct minor conduct or performance deficiencies. Prior to issuing the letter, a full and frank discussion should be held with the employee to discuss the matter. The supervisor should document this discussion as it will be cited in the letter.
- b. The written admonishment will advise the employee of his/her specific misconduct or performance deficiencies; of the acceptable standard(s) of conduct or performance; that the reasons given by the employee during the informal discussion were considered but were not acceptable; that future instances of misconduct or performance deficiencies may result in disciplinary action; that the letter will not be filed in the employee's OPF; of the employee's right to make a written reply to the action and have a copy of the reply filed with a copy of the document; and that the written admonishment will be in effect for a period of 1 year from the date issued.
- c. A copy of the written admonishment and supporting documentation shall be retained by the immediate supervisor during the 1 year reckoning period.

L. Disciplinary Actions.

1. Purpose. The purpose of disciplinary actions is to correct serious deficiencies involving employee conduct or performance. Disciplinary actions include letters of reprimand, suspensions, demotions, and removals. Although these actions are usually progressive, there may be an incident of misconduct or a

- 1.L.1. (cont'd) performance deficiency so serious that it warrants severe action, including removal from employment, for the first offense. Disciplinary actions become a matter of record in an employee's OPF.
2. Letter of Reprimand.
 - a. A letter of reprimand is the least severe disciplinary action. Prior to issuing a letter of reprimand, the supervisor will conduct a preaction investigation and make a determination of appropriate action.
 - b. The letter of reprimand should include the employee's specific instance(s) of misconduct or performance deficiencies; the acceptable standards of conduct or performance; that the reasons given by the employee during the discussion(s) (held in the preaction investigation) were considered but were not acceptable; a warning that future instances of misconduct or performance deficiencies may lead to more severe disciplinary action; that the reprimand will be filed with any reply made by the employee on the temporary side of the employee's OPF for a minimum of 1 year but not to exceed 2 years; and it will include the employee's grievance rights under the administrative grievance procedures as outlined in chapter 3 of this Manual or through negotiated grievance procedures, as appropriate.
 - c. At the end of the reckoning period (i.e., 1 to 2 years from the effective date of the letter) or upon separation or transfer, the letter of reprimand must be removed from the OPF and destroyed. If further incidence(s) of misconduct or performance deficiencies occur during the reckoning period and the letter of reprimand is cited, the letter of reprimand and its supporting documentation should be included as part of the formal disciplinary action case file.
3. Suspension for 14 calendar days or less.
 - a. Background. Under 5 U.S.C. 7503 and Subpart B of 5 CFR Part 752, an employee may be suspended for a period of 1 to 14 calendar days for such cause as will promote the efficiency of the service. Unlike a preliminary warning or a letter of reprimand, a suspension of 14 calendar days or less requires: (1) a notice proposing the action; (2) a reasonable time for the employee to reply orally and in writing; and (3) a written decision. The Notification of Personnel Action (Standard Form 50) documenting a suspension becomes a part of the employee's permanent record in his/her OPF. Before proposing a suspension for 14 calendar days or less, the supervisor and/or official who has authority to propose suspension actions will conduct a preaction investigation and make a determination of appropriate action. The Civilian Personnel Office will prepare or review advance notices of proposed actions and

- 1.L.3.a. (cont'd) written decisions before these are issued to employees. Blind copies of proposed suspensions and written decisions shall be forwarded by the Civilian Personnel Office to Commandant (G-PC) within 1 day of issuance. These copies are informational only. Suspensions for 14 calendar days or less are grievable adverse actions.
- b. Advance notice of proposed action. If a suspension is proposed for _____ 14 calendar days or less, an employee must be given advance written notice of the proposed suspensions, which includes:
- (1) The proposed length of suspension;
 - (2) A statement that the employee will be retained in an active duty status during the advance notice period;
 - (3) The reasons for the proposed action, which include the specific instance(s) of employee misconduct or performance deficiencies, how these violated acceptable standards of conduct, and any other appropriate factors such as consideration of any aggravating or mitigating factors (see Paragraph U. of this chapter);
 - (4) A statement that the action is proposed for the efficiency of the service;
 - (5) The right to reply orally and in writing and to furnish affidavits and other documentary evidence in support of the reply, and the date or number of days by which this reply must be made. (This answer period should be long enough so that it provides the employee a reasonable opportunity to prepare an answer to the proposed action. Under 5 CFR 752.203(c) the answer period may not be less than 24 hours. It is recommended that it not be less than 7 calendar days.);
 - (6) An explanation that consideration will be given to a request for extending the answer period if the employee provides justifiable reasons for a requested extension;
 - (7) A statement that the employee will be given, if requested, a reasonable amount of official time, if otherwise in an active duty status, to review the material relied on to support the proposal and to prepare an answer and secure affidavits. (For guidance concerning official time, see Paragraph N. of this chapter.);
 - (8) The name and title of the official designated to hear an oral reply and/or receive the written reply. (The official so designated must have authority either to make or recommend a final decision on the proposed action. For guidance concerning oral reply meetings, see Paragraph M. of this chapter.);

1.L.3.b.

- (9) The name and telephone number of the person to contact for making arrangements for the oral reply meeting;
 - (10) A statement that no decision will be made until after answers have been received and considered or until after the answer period has passed;
 - (11) The right to be represented by an attorney or other representative but that the agency may disallow a representative having a conflict of interest. (For guidance concerning disallowance of a representative, see Paragraph O. of this chapter.); and
 - (12) The right to review the material which was relied on to support the reasons given in the notice. This should include the name and telephone number of the person to contact for making arrangements for reviewing the material and where and when the supporting material can be reviewed.
- c. Written decision. An employee is entitled to a written decision at the earliest practical date which:
- (1) Informs the employee that only the reasons specified in the advance written notice of proposed action, and any amendments thereto, were considered;

- 1.L.3.c.
- (2) Specifies the reasons for the decision, including which incidents and/or charges were sustained or were not sustained;
 - (3) Informs the employee that full consideration was given to any answers made by the employee and/or the employee's representative. (If an employee submits a reply after the answer period has passed but before the deciding official has issued his/her final decision, the deciding official may consider the late reply.) If a reply was not made by the employee, a statement should be included to that effect;
 - (4) Warns the employee that any future instances(s) of misconduct or performance deficiencies may result in more severe disciplinary action, up to and including removal from employment;
 - (5) Advises the employee of the date(s) of the suspension. (A less severe action than proposed in the advance notice may be effected, but a more severe action may not be taken unless a separate advance notice is proposed.);

- 1.L.3.c. (6) Advises the employee of his/her right to file a grievance, including the time limits, under the administrative procedure or under a negotiated procedure, as appropriate; and
- (7) Is signed by an official in a higher position than the official who proposed the action (see paragraph D. of this chapter for exception).
4. Suspension for more than 14 calendar days, reduction in grade or pay, and removal.
- a. Background. Under 5 U.S.C. 7513 and Subpart D of 5 CFR Part 752, an employee may be suspended for more than 14 calendar days, reduced in grade or pay, and removed for such cause as will promote the efficiency of the service. These actions must be supported by the preponderance of the evidence and require:
- (1) Notice proposing the action;
- (2) An opportunity for an employee to reply orally and in writing; and
- (3) A decision letter to be issued at the earliest practical date, but effective no earlier than 30 calendar days, unless the crime provision (see paragraph L.4.c.(5) of this chapter) is invoked, from the date of the proposal notice.
- (a) The SF-50 documenting these actions becomes part of the employee's permanent record in his/her OPF. Before proposing a suspension for more than 14 calendar days, reduction in grade or pay, or removal action, the supervisor and/or official who has authority to propose the actions will conduct a preaction investigation and make a determination of appropriate action. The Civilian Personnel Office will prepare or review notices of proposed actions and written decisions before these are issued to employees. Blind copies of proposed actions and written decisions shall be forwarded by the Civilian Personnel Office to Commandant (G-PC) within 1 day of issuance. These copies are informational only.
- (b) Since the action is reviewable by an outside third party, such as the MSPB, the management representative should review notices of proposed actions and written decisions before issuance. (See chapter 4 for management representative responsibilities.) These actions are appealable adverse actions.
- b. Notice of Proposed action. The written notice must comply with the requirements of paragraph L.3.b. of this chapter, with the following differences:

- 1.L.4.b.
- (1) It must identify whether the action proposed is a suspension (including the proposed length), reduction in grade, or removal;
 - (2) The answer period may not be less than 7 calendar days; and
 - (3) If an appealable adverse action is taken, the notice must specify that the action will not be effective for at least 30 calendar days from the date of receipt of the advance notice. (Exception: If the crime provision is invoked, the action may be effected after the answers have been received and considered or the answer period has passed. This period may not be less than 7 calendar days. (See 5 CFR 752.404(d).)

c. Employee's status during the notice period.

Normally the employee will be retained in an active duty status during the notice period. There are exceptional situations, however, when the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in a loss of or damage to Government property, or otherwise jeopardize legitimate Government interests. OPM regulations at 5 CFR 752.404(b) (3) suggest the following alternatives:

- (1) Assigning the employee to duties where he/she is no longer a threat to safety, the agency mission, or to Government property;
- (2) Placing the employee on leave with his/her consent;
- (3) Placing the employee on involuntary sick or other leave when there is medical documentation demonstrating physical or mental incapacitation;
- (4) Carrying the employee on appropriate leave (annual, sick, leave without pay, or absence without leave) if he/she is absent for reasons not originating with the agency; or

- 1.L.4.c. (5) Curtailing the notice period when the "crime provision" under 5 U.S.C. 7513(b)(1) can be invoked. This provision may be invoked even in the absence of judicial action if the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be invoked.
- (6) If none of these alternatives is available, the employee may be placed in a paid nonduty status during all or part of the 30 days advance notice period.

| d. When the results of an investigation or
| examination are necessary for the proposal. In
| some cases, in particular cases involving crimes,
| there is an examination or investigation which is
| unreleasable to the agency because it may
| jeopardize that investigation. In these instances
| consideration should be given to an "INDEFINITE
| SUSPENSION" pending completion of the
| investigation or disposition of the criminal
| charges. Subsequently, appropriate disciplinary
| action could be considered. Indefinite
| suspensions are often complex issues and should be
| considered on an individual case basis in light of
| existing case law.

1.L.4.d. Written decision. The written decision must comply with the requirements of paragraph L.3.c. of this chapter with the following differences:

- (1) It must specify that the employee has the right of appeal to the MSPB, or when applicable, the right to file a grievance under the negotiated grievance procedures, or to file a discrimination complaint with the agency;
- (2) It must advise the employee that he/she may elect only one appeal procedure and whichever is elected first will be the one chosen.
- (3) It must advise the employee that any MSPB petition of appeal must be filed within the 20 calendar day period beginning with the day after the effective date of the action; and
- (4) It must provide the employee with a copy of the MSPB's regulations, the MSPB's appeal form, and the address of the appropriate MSPB office with which the appeal must be filed.

M. Conducting an Oral Reply Meeting.

1. The purpose of an oral reply meeting is to give an employee and/or the employee's representative an opportunity to answer personally the written notice of proposed suspension, reduction in grade or pay, or removal. These are scheduled at an employee's or the employee representative's request. An oral reply meeting is not a hearing in which the employee is entitled to call or cross-examine witnesses. Rather, it is an opportunity for the employee to make any plea he/she believes may influence the decision in his/her favor or to reduce the penalty. The employee's answer need not be restricted solely to the reasons cited in the advance written notice. For example, an employee may present evidence of mitigating circumstances which are of a highly personal nature. During the meeting, questions may be asked of the employee or employee's representative to clarify general or vague allegations. Final decisions should not be made during the meeting.
2. The deciding official may receive the employee's oral reply or may designate another official to receive it. If another official is designated, the designation shall be in writing and should direct the designee to present, in writing, the findings, conclusions, and recommended decision in the matter. In all cases, a summary of the employee's oral reply is required for the official case file.
3. The deciding official or individual designated to hear the oral reply may have individual(s), such as a civilian personnel advisor, present to assist in the meeting. These individuals may take notes, ask questions to clarify vague or general allegations, answer procedural questions, verify the employee's statements

- 1.M.3. (Cont'd) after the meeting, prepare a summary of the oral reply meeting, and provide advice and guidance to the deciding official.

N. Official Time.

1. An employee who is otherwise in an active duty status is entitled to a reasonable amount of official time to review the material relied on by management in making its decision to propose a grievable or appealable adverse action, to secure affidavits, and to prepare an answer. The amount of official time to be granted will be determined on a case-by-case basis. In making this determination, the supervisor or manager should consider the gravity and complexity of the charges, the amount of legal or regulatory research that may be appropriate, and the employee's knowledge of disciplinary proceedings and research abilities. Supervisors should avoid granting more official time than is absolutely necessary.
2. Official time will not be granted to an employee unless the employee requests it. If and when requested by the employee, the supervisor shall grant it for a specified duration at a time that reasonably comports with the work load and the employee's needs. Requests by employees for official time should be denied only when the request is clearly unreasonable. Supervisors who are unfamiliar with adverse actions should consult with the Civilian Personnel Office concerning requests for official time.

O. Disallowance of a Representative.

1. Basis for disallowing a representative. Under the provisions of 5 CFR 752.203(d) and 752.404(e), an employee's choice of representative may be disallowed when there is:
 - a. A conflict of interest such as representation by a supervisor or management official;
 - b. A conflict of position, such as a professional personnel specialist or Equal Employment Opportunity (EEO) specialist serving as an employee's representative in a case concerning a personnel action or EEO matter over which the employing personnel office or EEO office has control, has participated in, or has in any other way been involved;
 - c. An unreasonable cost to the Government;
 - d. A priority work assignment that precludes the representative's release; or
 - e. A bargaining agreement which governs representation for employees in an exclusive bargaining unit and the unit employee's choice of representative violates the provisions of the agreement.

1.0.2. Procedure for disallowing an employee's choice of representative.

- a. The determination to disallow the choice of an employee's representative will be made no lower than the level of the official designated to make the final decision on the proposed action. This determination, in writing, should provide the reasons for the disallowance.
- b. This decision is final.

P. Consideration of Medical Condition.

1. Employee's responsibility. If the employee wishes the proposing or deciding official to consider any medical condition which may contribute to a conduct or performance problem, the employee shall be given a reasonable time to furnish medical documentation (see 5 CFR 339.102). Whenever possible, the employee shall supply such documentation within the time limits allowed for an answer. Since the employee bears the burden of proof to demonstrate that a medical condition exists, the burden reasonably includes the cost of any necessary medical examination. In some cases, the supervisor, with the assistance of the Civilian Personnel Office and Coast Guard medical personnel (if available), may assist the employee by identifying, in writing, medical documentation which is necessary and relevant to the situation at hand. In most cases, a copy of the employee's physician's office or hospital records will contain the necessary information.
2. Management responsibility. After review of the medical documentation supplied by the employee, a medical examination under the criteria of CFR 339.302 may be offered or required. If an employee submits acceptable medical documentation to support his/her medical condition, including alcoholism and drug dependency, management may have an affirmative obligation under 29 CFR 1613.704 to provide reasonable accommodation of a qualified handicapped employee. In addition, if an employee has 5 years of service, the employee shall be provided information concerning disability retirement. An employee's application for disability retirement shall not preclude or delay any other appropriate personnel action. An agency may file an application for disability retirement on behalf of an employee only under the basis set forth in 5 CFR 831.1203.

1-Q. Official Case File. An official case record of the action shall be compiled and retained by the Civilian Personnel Office. The record must contain copies of the written notice of proposed action, the answer of the employee when written and a summary thereof when made orally, the written decision, and any supporting material which was used to support the reasons in the notice and relied on in making the decision. It may include statements of witnesses, affidavits, documents, previous disciplinary action(s) that were cited in the notice, and investigative reports or extracts from them. Official case files for appealable adverse actions should be arranged in accordance with the requirements set forth in paragraph E., chapter 4 of this Manual. These records must be destroyed 4 years after the case is closed.

R. Delivery of Disciplinary or Adverse Action Correspondence. When delivering correspondence concerning a disciplinary action, the line official making delivery shall make a notation on the copy of the correspondence of the time, date, and place of delivery, and any unusual circumstances. When making personal delivery of adverse action correspondence, a written acknowledgement of receipt should be utilized. If an employee refuses to accept the correspondence or is absent, it shall be mailed both regular and certified mail (return receipt requested) to the employee's last known home address. The determination that disciplinary or adverse action correspondence should be mailed will be made on an individual basis.

S. Voluntary Action by an Employee. An employee who is confronted by management with a potential disciplinary situation may volunteer to accept a lower grade, a reassignment, or to resign in lieu of a disciplinary action. However, management must not coerce the employee into taking such an action. It is permissible to tell an employee that a removal action is contemplated and that if he/she resigns before an action is proposed, no record will be made in the OPF. It is not permissible to tell the employee that he/she must resign or face a removal action. The latter example is coercion, and must be avoided.

T. Leave Abuse Problems.

1. General. Leave Without Pay (LWOP) is an approved absence. Supervisors should not attempt to impose disciplinary action based on instances of LWOP. If an employee is absent without permission, that employee must be carried as Absent Without Leave (AWOL) on his/her timecard and a factfinding discussion as described in section I. of this chapter should be held with the employee if he/she returns to work. A charge of AWOL will support charges relating to attendance offenses (See enclosure (2)). Every instance of AWOL, however, does not demand a disciplinary action. An employee who is AWOL will not be compensated for the period of unapproved absence. A supervisor may determine that the loss of pay is sufficient motivation to prevent such absences in the future.

1-T.2. Letters of requirement.

- a. A letter of requirement may be issued to an employee when the employee's use of leave (including requests for leave without pay) for medical reasons is excessive or reflects a questionable pattern. By this letter, a supervisor may impose requirements on an individual which do not apply to the rest of the work force. Specifically, the employee will be required to submit a medical certificate for every absence due to medical reasons, no matter how short. The letter should define acceptable medical certificates (i.e., signed by a physician, state the nature of illness, dates incapacitated, and date seen by the physician), advise the employee of the number of days by which he/she must provide acceptable documentation, and it may impose specific reporting requirements (i.e., by what time and to whom, including an alternate reporting official) on the employee. (For further discussion concerning medical documentation, see 5 CFR 339.102.)
- b. The letter will advise the employee that he/she will be carried in an AWOL status until acceptable medical documentation is provided and that AWOL in and of itself is not a disciplinary action but may form the basis for a disciplinary action. Charges of AWOL may be changed to an approved leave category only when acceptable documentation is submitted within the prescribed time limit or when the approving authority determines that circumstances are such that the absence is improperly charged to AWOL. The letter should warn the employee that failure to follow the procedures contained in the letter may result in disciplinary action.
- c. The letter may also warn the employee concerning his/her use of annual leave because of unplanned absences due to emergencies. When the employee's use of annual leave becomes excessive or reflects a questionable pattern, an employee may be required to submit documentation of the emergency, such as repair bills, for the time and date in question. Since employees have a right to take annual leave, supervisors must take work load considerations into account when determining whether to grant or deny annual leave.
- d. Prior to the issuance of a letter of requirement, the employee should be counseled concerning his/her attendance and given a reasonable time to improve. The supervisor should document this counseling session. If a letter becomes necessary because there has not been significant improvement, the employee should be told in a follow-up meeting that the letter will be issued. The letter should specifically describe the employee's excessive use or pattern of absences and cite the counselling session. If satisfactory improvement does not occur after the letter of requirement has been issued, further corrective action should be taken.

1.U. Douglas Factors. In Douglas v. Veterans Administration, 5 MSPB 313 (1981) 81 FMSR 7037, the MSPB held that it is management's burden to show the reasonableness of the remedy by demonstrating that appropriate consideration was given to each of the applicable factors set forth in the decision. These factors apply to appealable adverse actions and are recommended for grievable adverse actions and may include:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
6. Consistency of the remedy with those imposed upon other employees for the same or similar offenses;
7. Consistency of the remedy with any applicable agency table of remedies;
8. The notoriety of the offense or this impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. Potential for the employee's rehabilitation;
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12. The adequacy and effectiveness of alternative sanctions to determine such conduct in the future by the employee or others. (Not all of these factors will be pertinent in every case, and frequently in the individual case will weigh in the appellant's favor while others may not or may even constitute aggravating circumstances.)

CHAPTER 2. REDUCTION IN GRADE AND REMOVAL ACTIONS BASED ON
UNACCEPTABLE PERFORMANCE.

A. Policy. Employees shall be retained on the basis of the adequacy of their work performance. Supervisors must evaluate each employee's performance on a continuing basis and correct inadequate performance. Employees, who cannot or will not improve their performance, may be reduced in grade or separated when they fail to meet minimum performance standards for critical job elements. The Coast Guard may take these actions only after OPM has approved the agency performance appraisal system plans. All actions will be taken without regard to race, religion, sex, color, national origin, age, political affiliation, physical or mental handicapping condition, or marital status. In addition, actions will not be taken against an employee on the basis of any prohibited personnel practice (5 U.S.C. 2302).

B. Definitions.

1. Critical element. A component of a job consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that "Unacceptable" performance on the element would result in "Unacceptable" performance of assigned work.
2. Days Means calendar days.
3. Official. An individual who has been delegated the authority to propose or decide an action under this chapter.
4. Opportunity to demonstrate acceptable performance. A reasonable opportunity for the employee to show that he/she can meet established minimum performance standards for critical elements of the job.
5. Minimum performance standard. Partially successful standards for employees covered by the Performance Management System (PMS) and fully successful for employees covered by the Performance Management and Recognition System (PMRS).
6. Performance. An employee's accomplishment of assigned duties and responsibilities as specified in the critical and noncritical elements of the employee's position.

- 2.B.7. Performance Management System. Performance appraisal system that applies to employees in the General Schedule and related pay system, Federal Wage and related pay systems.
8. Performance Management and Recognition System. Performance appraisal system that applies to employees in grades 13 through 15 who are management officials or supervisors. The pay plan identifier for employees covered is GM.
9. Performance Standard. A statement of the expectations or requirements established by management for a critical or noncritical element at a particular rating level. A performance standard may include, but is not limited to, components such as quality, quantity, timeliness, and manner of performance.
10. Substantial Evidence. Degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as adequate to support a conclusion that the matter asserted is true. Substantial evidence means only that a reasonable person, such as a deciding official, could accept that evidence as adequate, even though other reasonable persons, including the MSPB administrative judge, might disagree. Reduction in grade and removal actions based on unacceptable performance must be supported by substantial evidence.
11. Unacceptable Performance. Performance which fails to meet established minimum performance standards in one or more critical elements of the employee's position. For purposes of this chapter, unacceptable performance means the same as unsatisfactory performance.

C. Coverage.

1. Employees. This chapter applies to all Coast Guard employees except:
- a. An employee of a nonappropriated fund activity;
 - b. An employee outside the United States who is paid in accordance with local native prevailing wage rates from the area in which employed;

- 2.C.1. c. An administrative law judge;
- d. An individual in the Senior Executive Service;
- e. An individual appointed by the President; and
- f. An individual occupying a position not in the competitive service excluded from coverage by regulations of the OPM.

2. Actions excluded.

- a. An action initiated under authority of the Special Counsel (5 U.S.C. 1206);
- b. An action taken against an administrative law judge (5 U.S.C. 7521)
- c. An action taken in the interests of national security (5 U.S.C. 7532);
- d. An action taken under a provision of statute, other than one codified in 5 U.S.C., which excepts the action from the provisions of 5 U.S.C.;
- e. A removal from the SES to a civil service position outside the SES;
- f. A reduction-in-force action;
- g. A voluntary action initiated by the employee;
- h. An adverse action for cause;
- i. An action which terminates a temporary or term promotion and returns the employee to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted;
- j. An involuntary retirement because of disability;
- k. A termination in accordance with terms specified at the time the appointment was made;
- l. An action against a reemployed annuitant;

- 2.C.2. m. A reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less;
 - n. A reduction to the grade previously held by a supervisor or manager who has not completed the supervisory or managerial probationary period; and
 - o. The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of continuous employment in the same or similar positions.
- D. Delegation of Authority. Area and district commanders, commanders, maintenance and logistics commands, and unit commanding officers are delegated authority to propose and decide actions under this chapter. These officials are authorized to redelegate this authority to subordinate supervisors and managers to the extent they deem appropriate. However, any action where the proposing official and the deciding official are the same individual, the decision must be concurred in by an official who is in a higher position than the official who proposed the action.
- E. Taking Appropriate Action.
- 1. When serious performance deficiencies are observed, the supervisor shall counsel the employee. In these counseling sessions, the supervisor should discuss how specific work assignments failed to meet the minimum performance standards and provide guidance to the employee for improving performance. The supervisor should also stress the importance of each component of a performance standard, especially if unsatisfactory performance on that component warrants an unsatisfactory rating for the entire critical element. These counseling sessions may eliminate the need for action. Since further corrective action may be required, however, these discussions should be documented. Enclosure (1) may be used for this purpose.

- 2.E.2. If serious performance deficiencies continue, the supervisor should submit the employee's critical elements and performance standards, with any available documentation of performance deficiencies, to the Civilian Personnel Office for review. This review is to ensure that the performance deficiencies relate to the critical elements and performance standards and the performance standards are reasonable and sufficiently objective and precise in the sense that most people will understand what they mean and what they require. If the standards are supplemented by written instructions, specific work assignments, etc., these also should be submitted to the Civilian Personnel Office.
3. If the critical elements and/or performance standards require revision, the procedures set forth in COMDTINST M12430.6A (series) or COMDTINST M12540.1A (series) for making changes shall be followed. If the critical elements and performance standards are adequate and the documentation indicates that the employee is performing below the minimum performance standard for one or more critical elements, the employee shall be issued a notice of unacceptable performance, given a Performance Improvement Plan (PIP), and provided with an opportunity to demonstrate acceptable performance.

F. Notice of Unacceptable Performance.

1. If it is determined that an employee's performance does not meet the minimum performance standard level in a critical element, the supervisor shall request that the Civilian Personnel Office prepare a notice of unacceptable performance. This notice may be issued at any time during the performance appraisal cycle and it is not grievable.
2. Prior to giving the notice to the employee, it should be reviewed by the Management Representative (see chapter 4 for the management representative's responsibilities) with any applicable documentation, to ensure technical compliance with controlling laws, rules, regulations, and case law.
3. Contents. The notice shall:
 - a. Advise the employee that his/her performance does not meet the minimum performance standard level.

- 2.F.3. b. Identify the employee's critical elements for which his/her performance is deficient and the minimum performance standards which the employee must meet;
- c. Advise the employee that failure to perform acceptably with respect to each component of the performance standard could be a basis for a reduction in grade or removal;
- d. Clearly establish a Performance Improvement Plan (PIP) to give the employee the opportunity to demonstrate acceptable performance;
- e. Establish a schedule of periodic reviews with the employee during the performance period;
- f. Advise the employee of any assistance available, such as reference manuals and guides;
- g. Advise the employee of any training (informal or formal) offered;
- h. Make an offer of referral to the ECAP (if appropriate); and
- i. Advise the employee that if performance does not improve to the minimum performance standard level on all critical elements, a reduction in grade, or removal action may be taken.
4. Documentation required during the opportunity to demonstrate acceptable performance. Although it is expected that the employee will improve performance, a supervisor must take action if the employee fails to improve to the minimum performance standard levels on all critical elements. Since the burden of proof is on management to support reduction in grade or removal actions, the supervisor must document the employee's performance during the opportunity period. The supervisor should consult with the Civilian Personnel Officer concerning the adequacy of the documentation during this period. Documentation must relate to the requirements outlined in the notice of unacceptable performance and should include:
- a. Specific results of performance (or lack thereof);
- b. Samples of work produced by the employee;

- 2.F.4. c. Discussions related to efforts made to help the employee, including summaries of remarks, and dates of discussions;
- d. Discussions related to the critical elements, performance standards, and the importance of each component of a performance standard (if applicable);
- e. Dates, places, and witnesses;
- f. Training (formal or informal) and coaching by others; and
- g. Referrals to the ECAP (if any).

G. Completion of Opportunity Period. At the end of the opportunity period, the supervisor shall consult with the civilian personnel office and take appropriate action. Depending on the level of the employee's performance, appropriate action must be taken as follows:

1. Fully Successful or Better Performance. If the employee improves to the fully successful level or better on all critical elements, the supervisor shall issue a notice of fully successful or better performance to the employee. The notice should recognize the employee's improved performance and encourage the employee to continue the good efforts. It will also advise the employee that the performance must be sustained, and if not sustained, action to remove or reduce in grade could be initiated within 1 year from the beginning of the opportunity period without the benefit of an additional opportunity period.

2. Performance meeting minimum performance standards.

- | a. PMS employees. If an employee improves to the
| minimum performance standard level only, the
| supervisor shall issue a notice advising the
| employee of such and warn the employee that
| performance at less than the fully successful
| level on a critical element may form the basis
| for denying the employee's next scheduled within-
| grade increase. (See COMDTINST M12430.6 (series)
| for denying within-grade increases.) This notice
| is not grievable. The supervisor should continue
| to work with the employee for improving
| performance to the fully successful level which
| may be done through counseling sessions as needed
| to correct the deficiencies.

2.G.2. b. PMRS employees. If an employee improves to the minimum performance standard level only, the supervisor may initiate action to remove or reduce in grade.

3. Unacceptable Performance. If the employee's performance does not improve to the minimum performance standard level on all critical elements, the supervisor should consider reassignment, reduction in grade, or removal of the employee. If it is noted that if action is taken to reduce in grade, or remove the employee based solely on unacceptable performance, the MSPB has no authority to mitigate management's choice of sanction (e.g., removal or reduction in grade). Accordingly, the Douglas factors set forth in Chapter 1 of this Manual are not applicable in performance based actions taken under chapter 43 of 5 U.S.C. Reductions in grade and removal actions must be supported by substantial evidence. The Civilian Personnel Office shall prepare or review notices of proposed actions and written decisions before issuing these to employees. Also, the management representative should review these notices before issuance. In addition, blind copies shall be forwarded by the Civilian Personnel Office to Commandant (G-PC) within 1 day of issuance. These copies are informational only.

4. Roller Coaster Employees. If the employee's performance improves to an acceptable level after being given an opportunity to improve and then again becomes unacceptable, action may be proposed to remove or reduce in grade. However, if an employee has performed acceptably for 1 year from the beginning of the opportunity to improve period, and the employee's performance again becomes unacceptable, there is a requirement to afford the employee an additional opportunity to improve.

H. Advance Notice of Proposed Action. An employee whose reduction in grade or removal is proposed is entitled to a 30-day advance notice of proposed action which:

1. Identifies the proposed action (reduction in grade or removal);
2. Identifies the critical elements and the minimum performance level standards that the employee failed to meet;

- 2.H.3. Includes the reasons for the proposed action (cite the specific instances of unacceptable performance as it relates to the minimum performance standards of the critical elements. The instances of unacceptable performance are restricted to a 1 year period ending on the date of this advance notice. If the employee met some but not all components of a standard which resulted in an overall rating of unsatisfactory for the critical element, explain the adverse consequences to the Coast Guard unit because of the employee's failure to perform acceptably with respect to the component or components at issue);
4. Provides the employee with the right to answer orally and in writing and the date or number of days by which this answer must be made. (The answer period may not be less than 7 calendar days;)
 5. Advises the employee that consideration will be given to a request for extending the answer period if the employee provides justifiable reasons for a requested extension;
 6. Provides the employee with the name and title of the official designated to hear an oral and/or receive the written reply. (The official so designated must have authority to either make or recommend a final decision on the proposed action. For guidance concerning oral reply meeting, see Paragraph M. of Chapter 1;)
 7. Contains a statement that no decision will be made until after the 30-day advance notice of proposed action has expired;
 8. Advises the employee of the right to be represented by an attorney or other representative but that the agency may disallow a representative having a conflict of interest. (For disallowance of a representative procedures, see paragraph O. of Chapter 1;)
 9. Provides the employee with an offer to review the material relied on to support the reasons given in the notice. This should include the name and telephone number of the person to contact for making arrangements for reviewing the material and where and when the supporting material can be reviewed;

- 2.H.10. Advises the employee that he/she will be given, if requested, a reasonable amount of official time, if otherwise in an active duty status, to review the material relied on to support the proposal; and
 11. Advises the employee that he/she will be retained in an active duty status during the advance notice period.
- I. Written decision. An employee is entitled to a written decision within 30 days after the date of the expiration of the advance notice of proposed action period which:
1. Informs the employee that only the reasons specified in the advance written notice of proposed action, and any amendments thereto, were considered;
 2. States the action to be taken and its effective date;
 3. Specifies the action to be taken and its effective date;
 4. Informs the employee that full consideration was given to any answers made by the employee and/or the employee's representative. (If an employee submits an answer after the answer period has passed but before the deciding official has issued his/her final decision, the deciding official may consider the late answer.) If an answer was not made, a statement should be included to that effect;
 5. Specifies the employee's right of appeal to the MSPB or, when applicable, the right to file a grievance under the negotiated grievance procedures, or to file a discrimination complaint with the agency;
 6. Advises the employee that he/she may elect any one appeal procedure and whichever is elected first will be the one chosen;
 7. Advises the employee that any MSPB petition of appeal must be filed within the 20 calendar day period beginning with the day after the effective date of the action;
 8. Provides the employee with a copy of the MSPB's regulations, the MSPB's appeal form, and the address of the appropriate MSPB office with which the appeal must be filed; and

- 2.I.9. Must be concurred in by an official in a higher position than the official who proposed the action.
- J. The advance notice period may be extended for a period not to exceed 30 days. Extensions beyond 30 days may be approved by Commandant (G-PC) without prior OPM approval for the following reasons:
1. To obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal;
 2. To arrange for the employee's travel to make an oral reply to an appropriate official or the travel of an official to hear the employee's oral reply;
 3. To consider the employee's answer if an extension to the period for an answer has been granted (e.g. because of the employee's illness or incapacitation);
 4. To consider reasonable accommodation of a handicapping condition;
 5. To consider positions to which the employee might be reassigned or reduced in grade; or
 6. To comply with a stay ordered by a member of the Merit Systems Protection Board under 5 U.S.C. 1208 (b).
 7. If an extension of the advance notice period is necessary for another reason, prior approval for such extension may be requested from the Chief, Employee Relations Division, Office of Employee and Labor Relations, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.
- K. Consideration of Employee's Performance During the 30-Days Advance Notice of Proposed Action. Management is not required to consider performance during an advance notice period since an employee previously had been provided with an opportunity to demonstrate acceptable performance. In rare cases, however, management may decide not to reduce in grade or remove an employee because he/she demonstrates acceptable (not just improved) performance during the advance notice period. If the employee's performance continues to be acceptable for 1 year from the date of the advance notice, any entry or other notation of unacceptable performance for which the action was proposed shall be removed from any agency record relating to the employee.

- 2.L. Relationship to Equal Employment Opportunity Complaint Procedures. When an employee makes a timely allegation, in writing, of discrimination the basis of race, color, sex, religion, physical or mental handicapping condition, age, or national origin before a final decision is issued in an adverse action based on unacceptable performance, further action should be deferred until the local Civil Rights Officer is consulted. Such consultation may be made by telephone to minimize delays. Since the Civilian Personnel Office is responsible for the technical processing of performance based actions, up to and possibly including management representation duties before the MSPB, the Civil Rights Officer will keep the Civilian Personnel Office informed concerning the specific allegations of discrimination in mixed cases. In addition, the Civilian Personnel Officer will keep the Civil Rights Officer informed of any decisions relating to performance-based actions when allegations of discrimination are made. Any information submitted by the employee or the employee's representative in the reply shall be considered by the deciding official and be included as part of the case file.
- M. Relationship to the ECAP. If there is reason to believe that an employee may have a physical, mental, or emotional basis for the performance deficiencies, it may be appropriate to make an offer of assistance in accordance with the procedures outlined in COMDTINST 12792 series. Referring an employee for counseling assistance is not a bar to taking corrective action. In some instances, it will be appropriate and necessary to take both actions when an employee's performance is unacceptable, even though the unacceptable performance results from a personal problem. Questions concerning the relationship between the ECAP and performance based actions should be referred to the Civilian Personnel Office.
- N. Consideration of Medical Condition.
1. If the employee wishes the proposing or deciding official to consider any medical condition which may contribute to his/her unacceptable performance, he/she shall be given a reasonable time to furnish medical documentation (see 5 CFR 339.102). Whenever possible, the employee shall supply this information at the time management offers him/her the opportunity to demonstrate acceptable performance.

- 2.N.2. Since the employee bears the burden of proof to demonstrate that a medical condition exists, that burden reasonably includes the cost of any necessary medical examination. In some cases, the supervisor, with the assistance of the Civilian Personnel Office and Coast Guard medical personnel (if available), may assist the employee by identifying, in writing, medical documentation which is necessary and relevant to the situation at hand. Generally, a copy of the employee's physician's office or hospital records will contain the necessary information. If the employee offers such documentation after management has proposed a reduction in grade or removal, he/she shall supply this information within the time limits allowed for a reply, whenever possible.
3. After review of the medical documentation supplied by the employee, a medical examination under the criteria of 5 CFR 339.301(a)(3) and the procedures of 5 CFR 339.302 may be offered or required. If an employee submits acceptable medical documentation to support his/her medical condition, including alcoholism and drug dependency, management may have an affirmative obligation under 29 CFR 1613.704 to provide reasonable accommodation of a qualified handicapped employee.
- O. Applications for Disability Retirement. If an employee has 5 years of service, the employee shall be provided information concerning disability retirement. An employee's application for disability retirement shall not preclude or delay any other appropriate personnel action. An agency shall file an application for disability retirement on behalf of an employee only under the basis set forth in 5 CFR 831.1203.
- P. Official Time.
1. An employee who is otherwise in an active duty status may be granted a reasonable amount of official time to review the material relied on by management in making its decision to propose the reduction in grade or removal action. The amount of official time to be granted will be determined on a case-by-case basis. Supervisors should avoid granting more or less official time than is absolutely necessary.
2. Official time will not be granted to an employee unless the employee requests it. If and when requested by the employee, the supervisor shall grant it for a specified duration at a time that reasonably comports with the work load the employee's needs.

2.Q. Delivery of Performance Based Adverse Action

Correspondence. When delivering correspondence concerning an adverse action (e.g., proposed reduction in grade or removal and decision), the line official making delivery shall make a notation of time, date, place of delivery, and any unusual circumstances on a copy of the correspondence. When making personal delivery of adverse action correspondence, a written acknowledgment of receipt should be utilized. If an employee refuses to accept the correspondence or is absent, it shall be mailed both regular and certified mail return-receipt requested to the employee's last known home address. The determination that adverse action correspondence should be mailed will be made on an individual basis.

- R. Voluntary Action by an Employee. An employee who is confronted by management with a potential performance based action may volunteer to accept a lower grade, a reassignment, or resign in lieu of an adverse action. However, management must not coerce the employee into taking such an action. It is permissible to tell an employee that a removal action is contemplated and that if he/she resigns before an action is proposed, no record will be made in the OPF. It is not permissible to tell the employee that he/she must resign or face a removal action. The latter example is coercion, and must be avoided.
- S. Official Case File. An official case record of the action shall be compiled by the Civilian Personnel Office. The record must contain copies of the advance written notice of proposed action, the answer of the employee when written and a summary thereof when made orally, the written decision, and any supporting material which was used to support the reasons in the advance notice and relied on in making the decision. It may include statements of witnesses, affidavits, documents, and investigative reports or extracts from them. Official case files should be arranged in accordance with the requirements set forth in Paragraph E., Chapter 4 of this Manual. These records must be destroyed 4 years after the case is closed.

CHAPTER 3. ADMINISTRATIVE GRIEVANCES

- A. Purpose. This chapter establishes the procedures for processing administrative grievances under which covered employees may seek redress of matters of personal concern and dissatisfaction relating to their employment. The policies and procedures outlined in this chapter apply to bargaining unit employees only when the issue is excluded from the negotiated grievance procedures but it is included in the administrative grievance procedures. Bargaining unit employees cannot use administrative grievance procedures when the issue is included in the negotiated grievance procedure.
- B. Policy. It is the goal of management to treat employees fairly and to resolve employee dissatisfactions promptly and equitably. It is recognized that despite the initial attempt to resolve a grievance, an employee may feel the need to seek higher level resolution. This chapter prescribes the procedures for the pursuit and handling of grievances to that end. It is the policy of the Coast Guard that such matters be given objective consideration and be disposed of promptly. The procedures set forth in this chapter are designed to achieve these objectives.
- C. Role of the Civilian Personnel Office. The Civilian Personnel Office will provide advice and guidance on the processing of grievances. If the formal grievance deciding official requires the assistance of a Hearing Examiner or a factfinder, the request will be made through the Civilian Personnel Office.
- D. Definitions.
1. Grievance. A written request by an employee or a group of employees for personal relief in a matter of concern or dissatisfaction relating to the employment of the employee(s) which is subject to the control of the area and district commanders, commanders, maintenance and logistics commands, and unit commanding officers.
 2. Employee. A present nonbargaining unit employee, an employee in a bargaining unit which does not have a negotiated contract in effect, or any former employee of the Coast Guard for whom a monetary remedy can be provided.
 3. Bargaining unit employee. An employee included in an appropriate bargaining unit for which a labor organization has been granted exclusive recognition.
 4. Personal relief. A specific remedy directly benefiting the grievant(s) which may not include a request for disciplinary or other action affecting another employee.

3. D. 5. Coast Guard Unit. Organizational entities under the area and district commanders, **commander of a maintenance and logistics command**, or unit commanding officer.
6. Deciding Official. Management or supervisory officials, who are in the line of authority over the grievant, have responsibility for deciding informal and formal step grievances. Grievance deciding officials must be officials at a higher administrative level than the official involved in any phase of the grievance. **For a grievance personally involving a commanding officer of a headquarters unit, the formal grievance deciding official shall be the director having technical control over the unit. The Civilian Personnel Management Division (CGPC-cpm) will serve as action office and coordinate efforts to recommend resolution to grievance deciding officials.**
7. Fact-finder. An individual appointed by the formal grievance deciding official to conduct an investigation into an issue(s) raised in the grievance. The fact-finder must be a person who has not been involved in the matter being grieved and who does not occupy a position directly subordinate or accountable to any official who recommended, advised, made a decision on, or who otherwise is or was involved in the matter being grieved. The fact-finder may be an employee within the Coast Guard unit, an employee of another Coast Guard unit or individual contracted for this purpose.
8. Hearing Examiner. An individual authorized by the formal grievance-deciding official to conduct a hearing on an issue(s) raised in a grievance. The hearing examiner will be an individual trained in conducting hearings and who has not been involved in the matter being grieved and who does not occupy a position subordinate to an official who recommended, advised, made a decision on, or who is otherwise involved in the matter being grieved, and who does not occupy a position subordinate to an official who recommended, advised, made a decision on, or who is grieved.
9. Day. Calendar day.
3. E. Employee Coverage. The policies and procedures contained herein extend to all present nonbargaining unit employees, including those holding part-time, probationary, temporary, and excepted appointments but do not apply to the following:
 1. Non-appropriated fund employees;
 2. A noncitizen appointed under Civil Service Rule VII or VIII, 8.3 of Title 5, CFR;

- 3.E.3. An alien appointed under section 1471(5) of Title 22 U.S.C.;
4. A bargaining unit employee covered by a negotiated grievance procedure (see exception in Paragraph A. of this chapter);
5. An applicant for employment who does not meet the definition of an employee in Paragraph D.2 of this chapter; and
6. An employee excluded from coverage by the OPM on the recommendation of the head of the Agency.

F. Subject Matter Coverage.

1. What is grievable? Generally, any matter of personal concern or dissatisfaction to an employee which is subject to the control of agency management is grievable. For specific exclusions, see Paragraph F.2. of this chapter.
2. What is not grievable? The following are matters to which this Manual does not apply:
- a. The content of published Department of Transportation and Coast Guard regulation and policies;
 - b. Nonselection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion;
 - c. Warnings, which if effected, would be grievable or appealable. This includes but is not limited to cautions, admonishments and proposed disciplinary actions.
 - d. Job elements, performance standards, performance counseling sessions (including WPPR's and mid-point sessions), and Performance Improvement Plans (PIP).
 - e. A return of an officer or employee from the SES to the General Schedule during the 1 year period of probation or for less than fully successful executive performance;
 - f. A reassignment of a SES appointee following the appointee's receipt of an unsatisfactory rating;

- 3.F.2. g. An action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee which assigns the employee from one geographical location to another;
- h. An action which terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted;
- i. An action which terminates a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of 2 years but not more than 5 years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay;
- j. A supervisor's determination of the objectives, critical elements, and performance standards for an employee's position;
- k. The granting or recommending of, or failure to grant or recommend, an employee performance award, or the adoption of or failure to adopt an employee suggestion or invention, or the granting or recommending of, or failure to grant or recommend an award of the rank of meritorious or distinguished executive;
- l. The receipt of or failure to receive a performance award or a quality salary increase;

3. F. 2. m. A merit pay increase or the lack of a merit pay increase under EARS, or a decision on the granting of or failure to grant cash or honorary recognition;
- n. The termination of a probationer under subpart H of Part 315 of Title 5 CFR;
- o. A performance evaluation under Subchapter II of Chapter 43 of Title 5, U.S.C. (SES personnel);
- p. Return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactorily complete the probationary period;
- q. The termination under Subpart D of Part 359 of 5 CFR of an SES career appointee during probation for unsatisfactory performance;
- r. A separation action not otherwise excluded above; and
- s. A decision which is appealable to the MSPB subject to final administration review by OPM, the Federal Labor Relations Authority (FLRA), or the EEOC under law or regulations of the Office, Authority, or the Commission. The following are examples of this category:
- (1) A reduction-in-force action appealable under Federal Personnel Manual 351;
 - (2) A violation of reemployment priority rights, reinstatement rights, or military restoration rights;
 - (3) A salary retention, within grade increase, or level of competence decision;
 - (4) A position classification or job grading decision;
 - (5) An adverse action (e.g., removal, suspension of more than 14 days, or demotion);
 - (6) Labor organization complaints;
 - (7) An unfair labor practice complaint processed under the regulations of the FLRA;
 - (8) Allegations of violations of the Fair Labor Standards Act; and
 - (9) Allegations of discrimination due to age, race, color, religion, sex, national origin, or handicap.

5. G. Right to Present. An employee is entitled to present a grievance through the procedures contained herein and as illustrated in enclosure (3).
1. Access to Advice. An employee presenting a grievance is entitled to communicate with and seek advice from the servicing civilian personnel office or a counselor of the agency. Command Staff Advisors or their designees may counsel and advise employees on procedural aspects and employee rights with respect to submitting and processing grievances.
2. Representation, Freedom from Restraint, Official Time. For purposes of presenting a grievance, an employee has a right to be accompanied, represented, and advised by a representative of his/her own choice. The grievant must indicate in writing his/her choice of representative and provide written notification of any subsequent change. The employee and his/her representative, if one is chosen shall:
- a. Be assured freedom from restraint, interference, coercion, discrimination, or reprisal;
 - b. Be allowed a reasonable amount of official time as determined by grievance deciding officials, to present the grievance if otherwise in an active duty status; and
 - c. An employee's choice of representative may be disallowed by the informal grievance deciding official on the basis of priority needs of the Government, unreasonable cost to the Government, conflict of interest, or conflict of position.
3. H. Informal Procedures. It is mandatory that an employee complete action under the informal procedure before a grievance will be accepted for processing under the formal procedure. Exception: Grievances which involve letters of reprimand, appeal a suspension of 14 days or less, involve annual performance rating, or personally involves area and district commanders, and commanders, maintenance and logistics commands, unit commanding officers, **assistant commandants for directorates, Director of Finance and Procurement, Director of Resources, Chief Counsel, or Chief of Staff**, shall be presented directly as formal grievances. Employees have 15 calendar days to file formal grievances concerning these exceptions.
1. Time Limits. An employee shall present a grievance concerning a particular act within 15 calendar days of the date of the act or occurrence or the date that the employee can be reasonably expected to have become aware of the act or occurrence. The timeframes

3. H. 1. outlined in enclosure (3) may be extended if it is shown that circumstances exist which are beyond the grievant's or management's control (i.e., illnesses, absences, complex issues, or workload).
2. Requirements. An employee shall initiate the informal procedure by presenting a grievance in writing to his/her immediate supervisor or to the next higher level in the chain of command if

3.H.2. (cont'd) the grievance concerns the immediate supervisor. If the employee elects to bypass the immediate supervisor, the supervisor should be informed by the grievant. When presenting a grievance, the employee must inform the informal grievance deciding official that a grievance is being presented so it will be clear that the grievance procedure is being invoked and that the employee is not merely discussing an item for clarification or presenting a problem which the employee does not intend to grieve.

a. A properly presented informal grievance must:

- (1) Be in writing;
- (2) Be timely filed;
- (3) Contain sufficient detail to identify and clarify the basis of the grievance;
- (4) Specify, as corrective action sought, relief which is directly personal to the grievant;
- (5) Contain the name, phone number, and location of the employee's representative (if elected); and
- (6) Be signed by the employee or by an individual designated by the employee as his/her representative.

3. Acceptance, rejection, and remand. The informal grievance deciding official will determine whether to accept or reject in whole or in part any grievance presented. If the informal grievance deciding official does not have the authority to resolve the matter, he/she will contact the Civilian Personnel Office for procedural guidance. In reaching a decision to accept or reject a grievance, the informal grievance deciding official will, with the assistance of the Civilian Personnel Office, determine if the grievance meets the requirements described in paragraph H.2.a. of this chapter. If the issues of the grievance or the relief sought are not clearly described, the informal grievance deciding official may remand the grievance to the grievant for clarification or additional information. The grievant must provide clarification within 5 calendar days. If the informal grievance deciding official rejects all or part of the grievance that decision may be grieved, in writing, within 5 calendar days to the formal grievance deciding official. The formal grievance deciding official's decision concerning the rejected issues is final and not subject to further review.

4. Informal grievance decision. The informal grievance deciding official shall investigate the grievance as appropriate, which may include meeting with the grievant and his/her representative. The timely processing of grievances should be a priority responsibility. The informal grievance deciding official shall develop a grievance file and he/she should provide the grievant with a written decision within 15 calendar days of receipt of the

- 3.H.4. (cont'd) employee's written grievance. If the informal deciding official is unable to reply within 15 days, he/she must inform the grievant why additional time is needed and indicate when the response can be expected. If no reply or reason for delay is received, the grievant may file a formal grievance. The written decision should include the following:
- a. The date of the informal grievance and the date it was received;
 - b. A statement of the issue(s) of the grievance presented by the employee and the requested relief;
 - c. Findings and conclusions on the issue(s) grieved;
 - d. The decision(s) on the issue(s) grieved. (If the relief requested by the employee is granted or if an alternative resolution satisfactorily resolves the grievance, a statement should be included to that effect. If the grievance is not resolved, a statement of any attempts made to obtain a satisfactory resolution, should be included.); and
 - e. A statement advising the employee where to submit a formal grievance, including the name and location of the formal step deciding official, and the time limit within which the grievance must be submitted in writing.

I. Formal Grievance Procedures. An employee whose grievance has not been resolved at the informal step may file a grievance with the formal grievance deciding official within 5 calendar days of receipt of the informal grievance decision. Normally, the formal grievance deciding official is the next higher level management official. Exception: Employees have 15 calendar days to file formal grievances when the informal step is excluded (see paragraph 3.H.).

1. Form. A properly presented formal grievance must:
 - a. Be in writing;
 - b. It must be presented within 5 calendar days of the informal grievance decision;
 - c. Contain sufficient detail to identify and clarify the basis of the grievance. It cannot contain issues which were not raised at the informal step; and
 - d. Specify, as corrective action sought, relief which is directly personal to the grievant. It should contain the reason(s) the proposed adjustment at the informal step (if any) was unacceptable.
2. Action by the formal grievance deciding official. If a formal step grievance is filed, the formal grievance deciding official must request the grievance file from the informal grievance deciding official. The formal step deciding official may use any

- 3.I.2. (cont'd) use any of the following procedures for issuing a final decision:
- a. Personally review the grievance file, informally investigate the grievance (which may include meeting with the grievant and his/her representative) and issue the final decision.
 - b. Appoint a factfinder to conduct an investigation and to prepare a report of findings, conclusions, and recommendations for disposition of the grievance. When factfinding is utilized, the grievance file will be made available to the grievant and his/her representative for review and comment. After the review the formal grievance deciding official will issue the final decision.
 - c. Appoint a grievance hearing examiner in unusual situations to conduct a hearing. The grievance hearing examiner will prepare a report of findings, conclusions, and recommendations for disposition of the grievance. The formal grievance deciding official will issue the final decision based on the grievance file and the hearing examiner's report.
3. Formal grievance decision. The formal grievance deciding official should provide the grievant with a written decision within 90 days from the date that the employee filed his/her informal grievance. Prior to issuance, these should be reviewed by the Civilian Personnel Office. The written decision should include the following:
- a. The date of the formal grievance and the date the formal grievance was received;
 - b. A statement of the issue(s) of the grievance presented by the employee and the requested relief;
 - c. Findings and conclusions on the issue(s) grieved;
 - d. The decision(s) on the issue(s) grieved. (If the relief requested by the employee is granted or if an alternative resolution satisfactorily resolves the grievance, a statement should be included to that effect. If the grievance is not resolved, a statement of any attempts made to obtain a satisfactory resolution should be included.); and
 - e. That the decision is final and no further consideration will be given to the matter grieved.
- J. Allegations of Discrimination. If an allegation of discrimination because of race, color, national origin, sex, age, religion, or handicap (physical or mental) is raised at any stage of the grievance procedure, the grievant must be informed in writing that introduction of the allegation will serve to terminate processing of the matter under this procedure. The grievant must be given the opportunity to withdraw the allegation and continue under the administrative grievance procedure, or proceed under the discrimination complaint

- 3.J.(cont'd) procedure commencing with the counseling stage. The grievant's decision must be documented and made a part of the case file. If the grievant chooses the complaint procedure, the grievance shall be canceled, the grievant notified, and the grievance file forwarded to the Civilian Personnel Office.
- K. Grievances Against Another Coast Guard Unit, Another DOT Operating Administration, or the DOT. An employee of one Coast Guard unit and/or the employee's representative may present a grievance to the Coast Guard unit or, in some cases the DOT administration which took the action being grieved. Travel expenses and per diem are not authorized in the pursuit of a grievance in these cases. In these cases, the Civilian Personnel Office should be contacted for procedural guidance.
- L. Combining Grievances. When two or more employees within the Coast Guard unit have identical grievances (i.e., the dissatisfaction expressed and the relief requested are the same), the grievances may be joined and processed as one group grievance. The employees will be notified and required to designate a representative for the group.
- M. Canceling a Grievance. A grievance may be canceled by:
1. The Employee. An employee may cancel a grievance at any stage of the grievance process. Once canceled, the grievance may not be reactivated.
 2. Termination of Employment. The grievance shall be canceled upon termination of an employee's employment with the Coast Guard unless the remedy requested by the employee with the Coast Guard unless the remedy requested by the employee would result in personal relief after termination of employment.
 3. Death. Death of the employee automatically terminates a grievance unless the adjustment sought involves a matter of pay to the beneficiaries of the deceased.
 4. By Management. The informal grievance deciding official shall cancel a grievance if the employee fails to prosecute the grievance or does not furnish required information or duly proceed with the advancement of the grievance in a timely manner. An employee will be notified, in writing, of the reasons for canceling his/her grievance and be informed of the right to protest the cancellation, in writing, to the next higher level of management within 5 calendar days of receipt of the notice. If the initial cancellation decision is made by the formal grievance deciding official, that decision is final and not subject to further review:
- N. Merit Promotion Plan Grievances. An employee must file an informal grievance concerning qualification or ranking matters with the Civilian Personnel Officer. The Civilian Personnel Officer will follow the same procedures as required for informal grievance processing. If the employee is dissatisfied with the Civilian Personnel Officer's written decision, he/she must file a formal grievance, using the formal grievance procedures, with the Civilian

3.N.(cont'd) Personnel Officer's immediate supervisor who will issue the final decision.

O. Grievance File. When a grievance is submitted, the individual receiving the grievance shall establish a grievance file which shall become the official file of the grievance proceedings. Grievance files will be maintained by the civilian personnel office and destroyed 3 years after the case is closed. The grievance file shall contain copies of all documents pertinent to the processing of the grievance, including:

1. Any available documentation of the processing of the grievance through the informal and formal grievance steps;
2. The employee's written grievance;
3. Available documentation of the grievance deciding official's efforts to communicate with the grievant and to resolve the grievance in a manner equitable to both management and the grievant;
4. Written designation of the grievance hearing examiner (or copy of the notice to the grievant of designation of the grievance hearing examiner);
5. Records or copies of available records relevant to the grievance;
6. Affidavits, depositions, or signed written statements of witnesses;
7. Factfinder's reports of personal interviews or group meetings;
8. The transcript or written summary of any hearing held;
9. Any written exceptions to the transcript or summary;
10. Any written comments made by the employee or the representative and by the management representative upon review of the grievance file;
11. A copy of the grievance decision; and
12. Any correspondence or documents relating to a disallowance of an employee's representative, the grievant's challenge of the disallowance, and the decision on the challenge.

P. Obtaining a Hearing Examiner. Requests for hearing examiners will be made through the Civilian Personnel Office to the following sources:

1. Commandant (G-CJ) for an assignment of an administrative law judge. Requests may be made by phone or message;
2. Other Federal agencies on a reimbursable detail basis; or
3. Contact Commandant (G-PC) for assistance if an examiner cannot be obtained from these sources.

3.Q. Grievance Hearings. Hearing are not to be scheduled as a routine part of a grievance procedure. It shall be scheduled only when required.

1. Scheduling. When a hearing is to be conducted, it shall be scheduled by the hearing examiner at a time that will assure meeting time requirements. An employee may request and receive a postponement of a scheduled hearing for good cause shown; such a postponement will extend the 90-day limit.
2. Site. The hearing site shall normally be at the grievant's place of employment except when otherwise agreed to by the parties.
3. Hearing Record. The hearing examiner shall, after coordination with the formal grievance deciding official, determine whether a verbatim transcript or summary shall be made of the hearing proceedings. The deciding official shall also arrange for such administrative support as may be required for a proper hearing.
4. Witnesses. Both parties are entitled to produce witnesses. The examiner shall determine whether a witness is to be called to testify after consideration of the requests made by the grievant and the Coast Guard. The Coast Guard shall make its employees available as witnesses when requested by the hearing examiner unless it is administratively impracticable to do so. The Coast Guard shall notify the hearing examiner in writing of its reasons for declining to make a witness available. Employees are in a duty status during the time they are made available as witnesses, provided they would otherwise be in a duty status.
5. Travel Expenses. Management shall not be responsible for travel and related costs for hearing participants and witnesses except as it shall agree.
6. Closing the Record. The hearing examiner will determine whether posthearing briefs will be permitted; time granted by the hearing examiner for submission of posthearing brief shall be added to the 90-day time limit. The parties may orally summarize testimony at the conclusion of the hearing for the record. The hearing record closes at the conclusion of the hearing, except as the examiner shall specifically provide.
7. Second Hearings. A second hearing will not be held in connection with a grievance.
8. Information Copy. A copy of each report of findings and recommendations rendered by an impartial third party shall be forwarded by the Civilian Personnel Office to Commandant (G-PC) for information and program maintenance purposes immediately upon receipt.

CHAPTER 4. APPEALS TO THE MERIT SYSTEMS PROTECTION BOARD.

A. Purpose. This chapter establishes Coast Guard requirements relating to representation before the MSPB.

B. Definitions.

1. Administrative Judge. Any person designated by the MSPB to preside over any hearing or to make an initial decision on the record.
2. Board. The MSPB in Washington, D.C. issues precedential decisions and orders which may be cited as controlling in other cases.
3. Days. Calendar days.
4. Final decision. A decision rendered by the MSPB; an initial decision which has become final as a result of not being contested; or a decision which has become final as a result of a petition for review having been denied and 5 days having elapsed.
5. Management Representative. The individual who represents the organization during the hearing before the presiding official or prepares a petition for review or the response to the appellant's petition for review.
6. Initial decision. Decision made by the MSPB regional office presiding official.
7. Mixed cases. Actions that are otherwise appealable to the MSPB in which the appellant makes an allegation of discrimination based on race, color, sex, religion, national origin, age, or physical or mental handicap.
8. Petition for appeal. A request for review of an agency action filed with the MSPB regional office.
9. Petition for review. The request filed with the MSPB for review of an initial decision.
10. Policy issue. An issue which may have a substantial impact on any policy established by the Coast Guard or may establish a new policy within the Coast Guard.
11. Precedential issue. An issue which has general applicability of a significant nature and which, if made the subject of a definitive ruling by the MSPB, will establish a rule which will govern the disposition of subsequent cases dealing with the same or similar issues.
12. Regional office. The MSPB office authorized to receive appeals from the area where the employee's duty station was located when the agency action was taken; there are 11 MSPB regional offices.
13. Response to a petition for review. A written document which responds to the arguments raised by the opposing party in its petition for review.

4.B.14. Sensitive issue. An issue which may have an adverse impact on the interests of the Coast Guard.

C. Delegation of Authority.

1. Chief, Civilian Personnel Division (Commandant (G-PC)). Commandant (G-PC) or their designated representative will retain the authority to represent the Coast Guard before the MSPB for those petitions for review and responses which involve issues which affect the Coast Guard as a whole, e.g., policy, precedential, or sensitive issues. This authority may be redelegated.
2. Area and district commanders, commanders, maintenance and logistics command, and unit commanding officers. The area and district commanders, Commanders Maintenance and Logistics Command, and unit commanding officers will represent the Coast Guard before the administrative judge and before the MSPB, if so authorized. It is essential that the individual designated be able to prepare and present the agency's case in a competent manner. While competent representation will not assure a successful outcome of the appeal, it will maximize the probability of success. An appeal may be won or lost based on the quality of representation. Therefore, the area and district commander or unit commanding officer may utilize whatever assets are available, whether they are legal (Office of Chief Counsel or district legal officer) or nonlegal (civilian personnel office).

D. Responsibilities.

1. Commandant (G-PC). Commandant (G-PC) is responsible for:
 - a. Promulgating Coast Guard policies and guidance;
 - b. Providing Coast Guard units with MSPB and court decisions relating to specific issues or cases;
 - c. Reviewing proposed adverse action and decision correspondence, if requested, to ensure technical compliance with applicable statutes, regulations, and policies;
 - d. Evaluating initial decisions and MSPB decisions to identify trends in decisions of administrative judges and the MSPB;
 - e. Determining which cases involve policy, precedential, or sensitive issues either as a result of management inquiry or on its own motion;
 - f. Representing Coast Guard in petitions for review in all cases involving policy, precedential, and sensitive issues or redelegating the representation on a case-by-case basis;
 - g. Maintaining a data base of Coast Guard MSPB decisions;
 - h. Contacting the OPM regarding cases before the MSPB or to seek OPM intervention before the MSPB; and

- 4.D.1. i. Contracting the Commandant (G-L) for purposes of having that office contact the Departmental Office of the General Counsel to seek judicial review through OPM and the Department of Justice of any final decision.
2. Area and district commanders, commanders, maintenance and logistics commands, and unit commanding officers. The area or district commander or unit commanding officer is responsible for:
 - a. Representing the Coast Guard before the administrative judge or the Board or redelegating that authority to a management representative;
 - b. Seeking advice or assistance from the civilian personnel office and/or legal office;
 - c. Filing responses to appellants' petitions for review and filing and submitting petitions for review;
 - d. Tentatively identifying those cases which involve precedential, sensitive, or policy issues and notifying Commandant (G-PC) by telephone within 1 day of receipt of the petition for appeal;
 - e. Contacting Commandant (G-PC) and Commandant (G-L) for any matter which may go to court;
 - f. Providing a copy of the initial decision on the date of receipt to Commandant (G-PC); and
 - g. Providing a copy of the MSPB decision on the date of receipt to Commandant (G-PC).
3. Management Representative. The management representative is responsible for representing the Coast Guard before the administrative judge which may include:
 - a. Becoming thoroughly familiar with the facts of the case, and obtaining assistance from subject matter specialists, including Commandant (G-PC), if needed;
 - b. Being knowledgeable of the rules of the MSPB (The MSPB appeals process is based, in large part, in 5 U.S.C. 1205 and 7701 and 5 CFR Parts 1200 and 1201);
 - c. Developing a theory of the case which is consistent with the facts which management wants to present;
 - d. Considering what, if any, affirmative discovery procedures are appropriate in the preparation of the case and responding to all discovery initiated by the appellant;
 - e. Presenting management's case through the testimony of witnesses, interrogatories, exhibits, etc;

- 4.D.3. f. Preparing and filing a posthearing brief, if desirable or if directed to do so by the presiding official to complete the case;
 - g. Preparing petitions for review to the MSPB or responses to the appellant's petition for review to the MSPB for matters not involving policy, precedential, and sensitive issues;
 - h. Binding management to actions by agreement or factual admissions by stipulation; and
 - i. Forwarding the file to the civilian personnel office (if the management representative is not from that office) subsequent to the initial decision becoming final or when all pleadings have been filed before the MSPB.
4. Civilian Personnel Officer. The Civilian Personnel Officer is responsible for:
 - a. Providing procedural information to employees regarding their appellant rights;
 - b. Providing advice and assistance to management representatives, acting as technical advisors to the management representative, or acting as the management representative when designated; and
 - c. Maintaining the official case file for each appellant as required in paragraph E. of this chapter.

E. Official Case File.

1. The Civilian Personnel Officer shall maintain the case record for each appeal and destroy these records 4 years after the case is closed. This record will contain, at a minimum, a copy of:
 - a. The proposed action;
 - b. The employee's written answer, if any;
 - c. A summary of the employee's oral reply, if one was made;
 - d. The notice of decision and the reasons therefore;
 - e. Any supporting material; and
 - f. An order affecting the decision.
2. If an employee appeals to the MSPB, the record shall be furnished to the employee affected upon the employee's request and to the MSPB. The record shall be submitted to the appropriate field office in the manner requested by the MSPB field office. Generally, the record will be compiled, as follows:
 - a. The documents should be placed in date order with the earliest dated document at the bottom and the latest dated document at the top;

4.E.2. b. A table of contents should be prepared which identifies the case and lists all the enclosed documents (the earliest dated document should be identified and tabbed as number 1, the next document in date sequence should be identified and tabbed as number 2, and so on. The highest number should indicate the most recent document); and

c. The table of contents should have the following headings:

<u>Location</u>	<u>Date</u>	<u>Document Description</u>	<u>Source</u>
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(The location indicates the tab number under which the document is filed; the date is the date of receipt or issuance of the document; document description should fully identify the document; source should indicate the submitter of the document.)

d. Place the completed table of contents on top of the tabbed documents on the right side.

F. Mixed Cases. There are special jurisdictional rules governing the processing of mixed cases. Mixed cases may initially be appealed to the MSPB regional office or grieved under the negotiated grievance procedure or processed as complaints of discrimination with the agency. Regardless of which of these avenues of review the employee initially chooses, the mixed case will ultimately be processed under the procedures of 5 U.S.C. 7702, 5 CFR 1201.151-.158 and EEOC's "mixed cases" regulations at 29 CFR Part 1613, Subpart D. These provisions allow for review by both MSPB and EEOC, culminating in review by a "special panel" in the event these two agencies are unable to agree on a final decision. Enclosure (4) is a mixed case processing chart.

DISCUSSION DOCUMENTATION SHEET

Name of Employee_____

Date of Discussion_____

DESCRIBE THE INCIDENT. (Briefly describe what the employee did or did not do that was wrong; where did it occur; how did it violate regulations, standards, etc., and when did the incident happen and who was involved, to include witnesses.)

DESCRIBE THE ACCEPTABLE STANDARDS OF CONDUCT OR PERFORMANCE.
(Attach any written guidance given to the employee.)

DESCRIBE THE EMPLOYEE'S EXPLANATION FOR THE INCIDENT. (To include any mitigating or aggravating factors.)

DESCRIBE YOUR RESPONSE TO THE EMPLOYEE.

SUPERVISOR'S SIGNATURE

DATE

If additional space is needed to complete the required information, attach extra sheets.

GUIDELINE SCHEDULES OF OFFENSES AND REMEDIES

1. This guideline schedule is provided as a guide to managers in the administration of discipline. The schedule sets out a uniform code and range of remedies for certain offenses, and provides flexibility in administering disciplinary and adverse actions. The schedule is not intended to cover every possible offense. Remedies for offenses not listed will be determined consistent with the guidelines contained herein. (See Douglas v. Veterans Administration, MSPB Docket No. AT075299006, April 10, 1981, 81 FMSR 5323 for guidance on selection of remedies. Also, chapter 1, paragraph V.1.b. of this Manual contains a list of the Douglas factors.) The objectives of the schedule are:
 - a. To ensure insofar as possible that like penalties will be imposed for like offenses;
 - b. To inform employees and management officials of what constitutes reasonable cause for disciplinary action and to set forth the range of penalties; and
 - c. To assure that the minimum level of penalty that can be expected to correct the situation is used.
2. Remedies for offenses will, in general, range from the minimum to the maximum indicated. Greater or lesser penalties than set out in the schedule may be imposed depending on mitigating or aggravating factors.
3. Many of the items listed on this schedule combine several offenses in one statement connected by the word "OR." Usage of the word "OR" in a charge makes it nonspecific. Therefore, use only the items which describe the employee's actual conduct and leave out parts which do not apply. You should not cite more than one charge for a single offense (example: "sleeping" and "loafing"). In such a case the more appropriate offense shall be used and the proper penalty imposed. When the infraction covers a combination of two or more normally unrelated offenses (example: "Being on duty while under the influence of 'alcohol' and 'striking a supervisor'"), charges covering each should be cited.
4. Suspension remedies on this schedule refer to calendar days.
5. In considering past offenses in determining a remedy, the following limitations must be observed:
 - a. Oral counseling sessions and written admonishments may not be counted as prior offenses in determining a remedy. These may be cited, however, to show that the employee was informed of acceptable level of conduct and performance.

5. b. A letter of reprimand may be counted as a prior offense provided the reckoning period for the letter of reprimand has not expired.
- c. A suspension or reduction in grade or pay (if effected for disciplinary reasons) may be counted as a prior offense provided the reckoning period has not expired.
- d. In utilizing past offenses in determining a corrective action, the notice of proposed adverse action should cite specifically the past offense in sufficient detail to allow the employee to respond. (Respond does not mean to "grieve" or to "appeal" the past offense since the employee had previously had this opportunity. Rather, the past offense is cited as part of management's determination for selecting a specific remedy.) Past offenses may only be counted if the employee was disciplined in writing, the employee had the right to dispute the action to a higher level, and the action was made a matter of record in the official personnel folder (Howard v. Department of the Army, MSPB Docket No. PH075209128, May 15, 1981).

OFFENSE AND RANGE OF REMEDIES

OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
<u>ATTENDANCE</u>			
EXCESSIVE UNAUTHORIZED ABSENCE (MORE THAN 5 CONSECUTIVE WORK DAYS)	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
FALSIFYING ATTENDANCE RECORD FOR ONESELF OR ANOTHER EMPLOYEE	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
LEAVING JOB TO WHICH ASSIGNED OR COAST GUARD PREMISES AT ANY TIME DURING WORKING HOURS WITHOUT PROPER PERMISSION	Reprimand to 5-day suspension	5- to 10-day suspension	10-day suspension to removal
UNEXCUSED OR UNAUTHORIZED ABSENCE ON ONE OR MORE SCHEDULED DAYS OF WORK OR ASSIGNED OVERTIME	Reprimand to 2-day suspension	1- to 5-day suspension	5-day suspension to removal
*UNEXCUSED TARDINESS	Reprimand	Reprimand to 1-day suspension	Reprimand to 2-day suspension

*This includes a delay in reporting at the scheduled starting time, returning from lunch or break periods, and returning after leaving work station on official business.

OFFENSE AND RANGE OF REMEDIES

OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
<u>CONDUCT</u>			
UNAUTHORIZED POSSESSION (INCLUDING ACTUAL OR ATTEMPTED WRONGFUL REMOVAL FROM ITS PROPER LOCATION) OF GOVERNMENT PROPERTY OR THE PROPERTY OF OTHERS *	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
*Do not use "theft" as a charge unless the definition in <u>Black's Law Dictionary</u> can be met.			
CRIMINAL, DISHONEST, INFAMOUS, OR NOTORIOUSLY DISGRACEFUL CONDUCT HAVING AN ADVERSE EFFECT ON THE EFFICIENCY OF THE SERVICE	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
DISOBEDIENCE TO CONSTITUTED AUTHORITIES, OR DELIBERATE REFUSAL TO CARRY OUT ANY PROPER ORDER FROM ANY SUPERVISOR HAVING RESPONSIBILITY FOR THE WORK OF THE EMPLOYEE; INSUBORDINATION	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
DISORDERLY CONDUCT; FIGHTING; THREATENING OR ATTEMPTING TO INFLICT BODILY INJURY TO ANOTHER; ENGAGING IN DANGEROUS HORSEPLAY; OR RESISTING COMPETENT AUTHORITY	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

OFFENSE AND RANGE OF REMEDIES

OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
DISRESPECTFUL CONDUCT, USE OF INSULTING, ABUSIVE OR OBSCENE LANGUAGE TO OR ABOUT OTHER PERSONNEL	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
FAILURE TO CARRY OR SHOW PROPER IDENTIFICATION ON COAST GUARD PREMISES AS REQUIRED BY COMPETENT AUTHORITY	Reprimand to 1-day suspension	1- to 2-day suspension	2- to 5-day suspension
WILLFUL UNAUTHORIZED USE OF A GOVERNMENT VEHICLE OR WILLFULLY APPROVING THE UNAUTHORIZED USE OF A GOVERNMENT VEHICLE	30-day suspension to removal	Removal	
* * * * *			
FALSIFICATION, MISSTATEMENT, OR CONCEALMENT OF MATERIAL FACT IN CONNECTION WITH ANY OFFICIAL RECORD	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
FALSE TESTIMONY OR REFUSAL TO TESTIFY IN AN INQUIRY, INVESTIGATION OR OTHER OFFICIAL PROCEEDING	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
FILING FALSE CLAIMS AGAINST THE GOVERNMENT OR KNOWINGLY AIDING AND ASSISTING IN THE PROSECUTION OF SUCH CLAIMS	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

OFFENSE AND RANGE OF REMEDIES

OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
KNOWINGLY MAKING FALSE OR MALICIOUS STATEMENTS WITH THE INTENT TO HARM OR DESTROY THE REPUTA- TION, AUTHORITY, OR OFFICIAL STANDING OF INDIVIDUALS OR ORGANIZATIONS	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
*CARELESS WORKMAN- SHIP RESULTING IN SPOILAGE OR WASTE OF MATERIALS OR DELAY IN PRODUCTION	Reprimand to 5-day suspension	5- to 10-day suspension	10-day suspension to removal
*COVERING UP OR ATTEMPTING TO CONCEAL DEFECTIVE WORK; REMOVING OR DESTROYING SAME WITHOUT PERMISSION	Reprimand to 2-day suspension	1- to 5-day suspension	5-day suspension to removal
*FAILURE OR DELAY IN CARRYING OUT ORDERS, WORK ASSIGNMENTS, OR INSTRUCTIONS	Reprimand to 2-day suspension	1- to 5-day suspension	5-day suspension removal
* Action may be taken under chapter 2 rather than chapter 1 of COMDTINST M12750.4 (series) if these areas are covered in employee's critical elements and performance standards.			
LOAFING, WASTING TIME, OR INATTENTION TO DUTY	Reprimand to 2-day suspension	1- to 5-day suspension	5-day suspension to removal
SLEEPING ON DUTY	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
a. WHERE LIFE OR PROPERTY IS ENDANGERED	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

OFFENSE AND RANGE OF REMEDIES

OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
UNAUTHORIZED USE OF, LOSS OF, OR DAMAGE TO GOVERNMENT PROPERTY OR THE PROPERTY OF OTHERS	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
GAMBLING OR BETTING DURING WORKING HOURS	Reprimand to 2-day suspension	Reprimand to 5-day suspension	Reprimand to removal
PROMOTION OF GAMBLING ON COAST GUARD PREMISES	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
WILLFUL DAMAGE TO GOVERNMENT PROPERTY OR THE PROPERTY OF OTHERS	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
<u>DISCRIMINATION</u>			
DISCRIMINATION AGAINST AN EMPLOYEE OR APPLICANT BECAUSE OF RACE, COLOR, RELIGION, SEX, HANDICAP, NATIONAL ORIGIN, OR AGE, OR ANY REPRISAL ACTION ON SUCH BASIS AGAINST AN EMPLOYEE	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
SEXUAL HARASSMENT	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

OFFENSE AND RANGE OF REMEDIES

OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
<u>SAFETY</u>			
FAILURE TO OBSERVE PRECAUTIONS FOR PERSONAL SAFETY, POSTED RULES, SIGNS, WRITTEN OR ORAL SAFETY INSTRUCTIONS, OR TO USE PROTECTIVE CLOTHING OR EQUIPMENT	Reprimand to 2-day suspension	1- to 5-day suspension	10-day suspension to removal
VIOLATION OF SAFETY REGULATION WHICH ENDANGERS LIFE OR PROPERTY	Reprimand to 5-day suspension	2-day suspension to removal	10-day suspension to removal
ENDANGERING THE SAFETY OF OR CAUSING INJURY TO PERSONNEL THROUGH CARELESSNESS	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
FAILURE TO OBSERVE NO SMOKING REGULA- TIONS OR CARRYING MATCHES IN RESTRICTED AREAS	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
VIOLATIONS OF TRAFFIC REGULATIONS, RECKLESS DRIVING ON COAST GUARD PREMISES OR IMPROPER OPERATION OF MOTOR VEHICLE	Reprimand to 2-day suspension	Reprimand to 5-day suspension	5- to 10-day suspension
VIOLATING TRAFFIC REGULATIONS, RECKLESS DRIVING OR IMPROPER OPERATION OF MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS	14-day suspension to removal	30-day suspension to removal	Removal

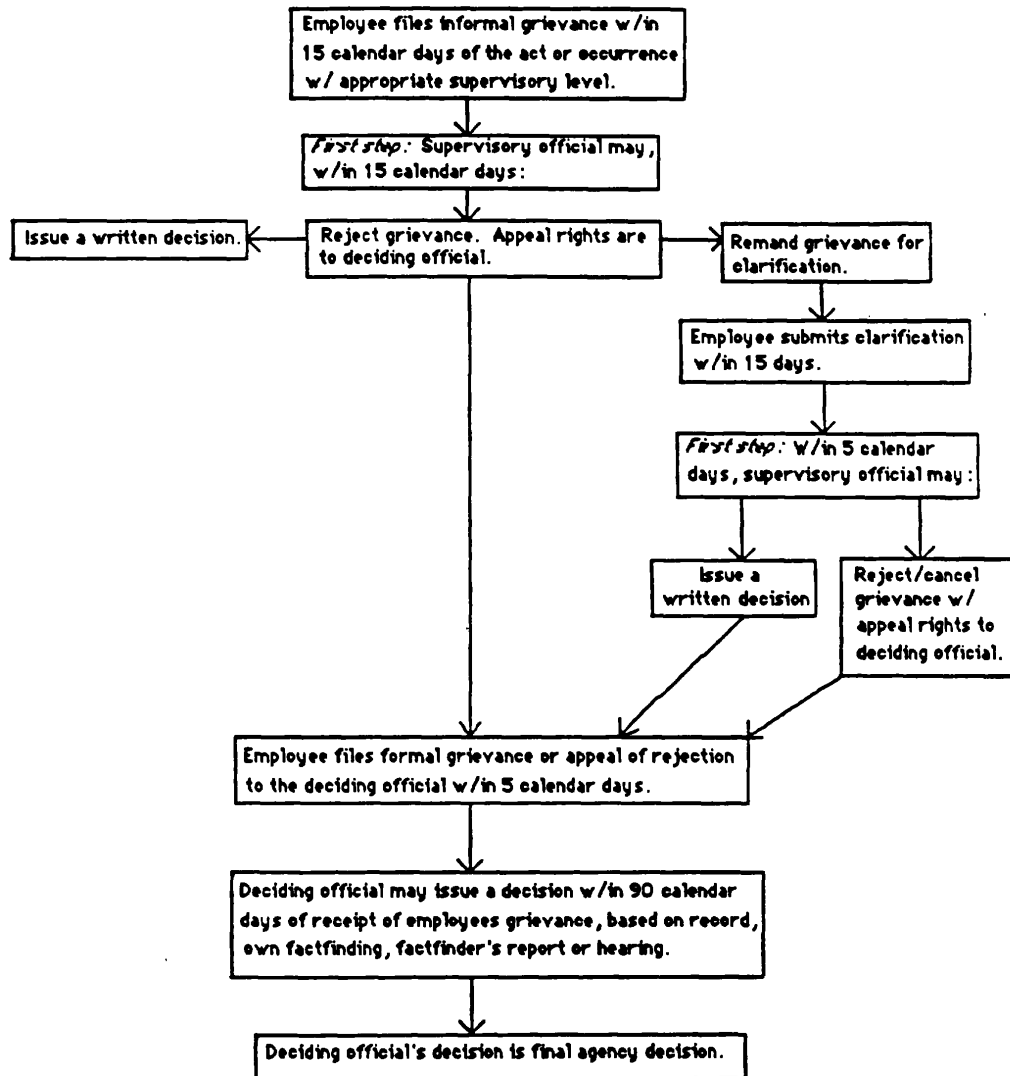
OFFENSE AND RANGE OF REMEDIES

OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
<u>SECURITY</u>			
FAILURE TO SAFEGUARD CLASSIFIED MATTER OR OTHER SECURITY VIOLATIONS	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
a. WHEN CLASSIFIED MATERIAL HAS BEEN COMPROMISED	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
<u>PROHIBITED PERSONNEL PRACTICE</u>			
COMMITTING A PROHIBITED PERSONNEL PRACTICE (SEE 5 U.S.C. 2302)	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
<u>SUBSTANCE ABUSE</u>			
UNAUTHORIZED POSSESSION OF ALCOHOL ON DUTY	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
*REPORTING FOR DUTY UNDER THE INFLUENCE OF ALCOHOL	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
*USE OF OR BEING UNDER THE INFLUENCE OF ALCOHOL ON DUTY	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
UNAUTHORIZED SALE OR TRANSFER OF ALCOHOL ON DUTY	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

*Referral to Civilian Employee Counseling Assistance Program (ECAP) and reasonable accommodation must be provided in certain instances prior to initiation of disciplinary action when the employee's substance abuse is a handicapping condition as defined in the Rehabilitation Act of 1973 (29 CFR 1613.701 et seq.) and that management knew or should have known that the condition existed prior to the incident giving rise to the consideration of disciplinary action.

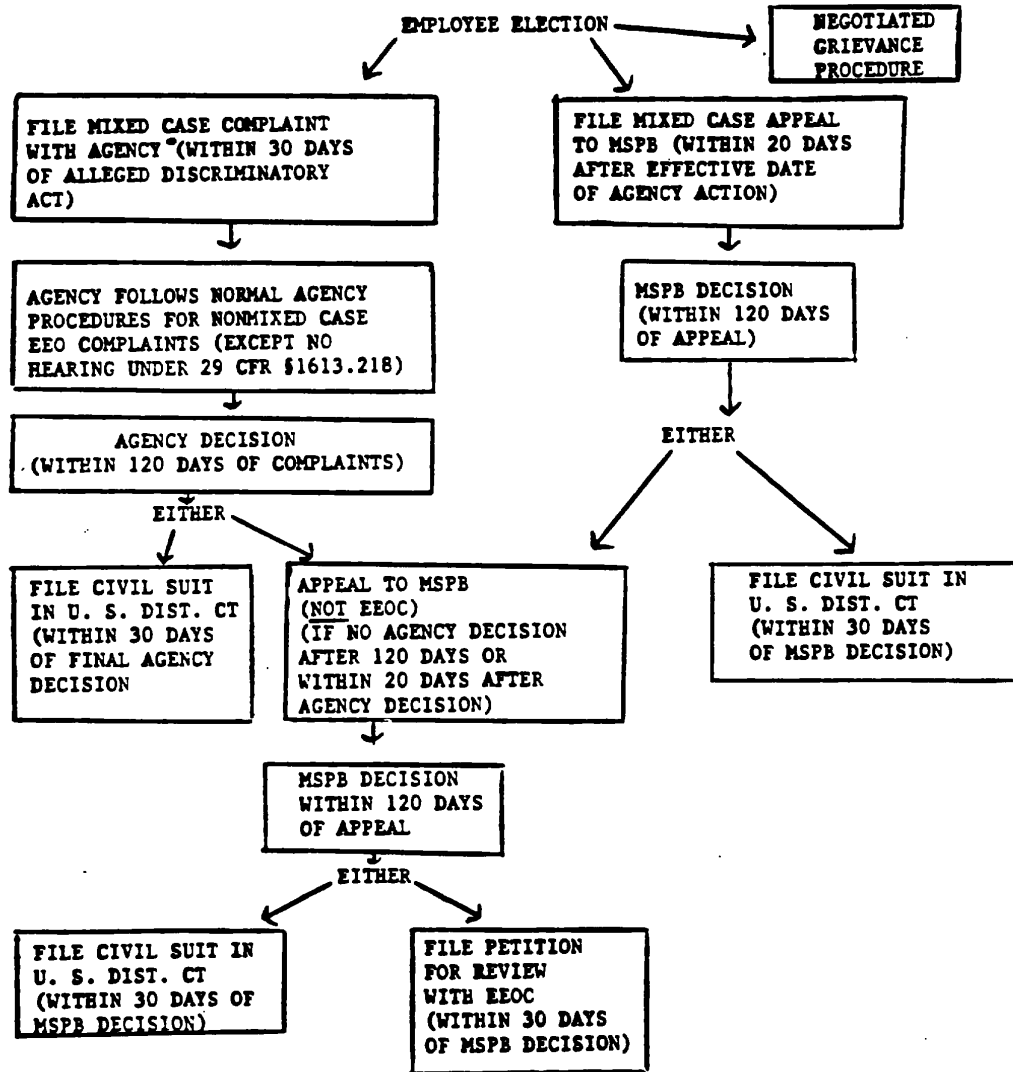
Enclosure (3) to COMDTINST M12750.4

CHART OF GRIEVANCE PROCEDURE



Enclosure (4) to COMDTINST M12750.4

CHART OF MIXED CASE PROCEDURES



Enclosure (4) to COMDTINST M12750.4

